MUNICIPAL COMMITTEE, PATIALA

v.

MODEL TOWN RESIDENTS ASSON. & ORS.

AUGUST 1, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Punjab Municipal Act, 1911 as amended by Act 11 of 1994; Ss. 3(1), 3(8aa) and 68/Land Acquisition Act, 1894; S.23/Registration Act, 1908/ Constitution of India, 1950; Articles 14 and 226:

Levy of house-tax—Amendment made in Section 3 of the Act—As per amended provisions, house-tax leviable at different rates on the same property when used by the owner and the tenant and market value of the property could be determined without providing any guidelines—Amended provisions of Law—Constitutionality of—Held: 'Rate' in the context of levy of house-tax means a tax on annual value/rateable value of land/building—Prior to amendment, the tenanted as well as self-occupied premises equated in the matter of determination of gross annual rent—However, in case it was not possible for the Municipality to determine the gross annual rent in terms of the provisions of law, it could fix the annual value in terms of certain formula—Legislature has given a great amount of leeway in the matter of taxation—Article 14 of the Constitution does not prohibit classification—Classification made between premises occupied by the tenants on one hand and those occupied by the owner himself on the other is wholly reasonable and has direct nexus with the object sought to be achieved—Hence, the High Court erred in holding that Section 3(1)(b) of the Act making an invidious discrimination between premises in occupation of the tenant and which are self-occupied—Besides as per amended provision u/s.3(8aa), a formula has been evolved to assess house-tax on self-occupied premises whereby tax on annual value could be calculated on the basis of market value of the land taking into account cost of construction and deducting the depreciation—While calculating the market value of the land, Assessing Officer will keep in view the principles mentioned in the Land Acquisition Act—Hence, the High Court erred in striking down Section 3(8aa) on the ground of absence of guidelines in the amended provisions in determining the market value of the land.

A *Legislative power to enact validation law making them effective retrospectively—Power of Judicial Review—Exercise of—Held: It is not open to the High Court to exercise such powers under Article 226 of the Constitution, particularly in the matter of taxation—Constitution of India, 1950—Article 226.*

B **The question which arose for determination in these appeals was as to whether the High Court was right in holding, Section 3(1)(b) of the Punjab Municipal Act as amended by Act 11 of 1994, whereby the same property is subjected to house-tax at different rates when it is occupied by a tenant and landlord and also Section 3(8aa) as amended defining "market value" for the C purpose of levying house tax without indicating any guidelines for its determination, as unconstitutional since it suffers from the vice of discrimination.**

Appellant-Municipal Committee contended that Section 3(1)(b) of the Punjab Municipal Act, as amended, makes no distinction between self occupied D land or building and tenanted land or building; that as per amended provision, annual value of the property in occupation of the tenant has to be determined on the basis of actual rent which that property would fetch whereas if the same property if it is in occupation of its owner then the rateable value under the amended provisions shall be calculated in accordance with Section 3(1)(b) of the Act; that in the case of commercial property, it is the tax on the scarce E resources, mainly the land whose prices are escalating, which provides an intelligible differentia having requisite connection with the object sought to be achieved; that there cannot be a straight-jacket formula for determination of the annual value; and that the State is always entitled to raise its resources by way of imposition of tax.

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Respondent-assessee contended that there is no rational basis for making the classification as introduced in Section 3(1)(b) by way of the amendment, particularly when both the premises, whether let out or self occupied, are subject to rent restrictions under the Act.

G **Allowing the appeals, the Court**

HELD: (Per KAPADIA, J.)

1.1. Prior to the Amending Act of 1994, annual value under Section 3(1)(b) of the Punjab Municipal Act was defined to mean the gross annual H rent at which the house or building could be let out from year to year subject

to statutory deductions. Therefore, under the unamended Section the tenanted as well as self-occupied premises stood equated in the matter of determination of the gross annual rent. However, even under the unamended Act, vide Section 3(1)(c) of the Act, it was stipulated that if in a given case it was not possible for the municipality to determine the gross annual rent, then, 5% of the total sum obtained by adding the estimated present cost of construction, less such amount as the Committee may deem fit to be deducted on account of depreciation to the estimated market value of the land (site). Therefore, even under the unamended section, in marginal cases, it was open to the municipality to fix the annual value at 5% of the sum obtained by adding the cost of construction to the market value of the land. [Para 11] [731-D, E, F]

1.2. It appears that on account of increase in the market price of the land in question that the State Legislature amended Section 3(1) by Punjab Amending Act 11 of 1994 by which it had been stipulated vide Section 3(1)(b) that in cases where land or building is self occupied, the annual value shall be 5% of the sum obtained by adding the present market value of the land and the estimated cost of construction less 10% deduction on account of depreciation. By the said amendment it had been laid down under Section 3(8aa) that the word "market value" of the land or building shall be determined in accordance with the principles in Section 23 of the Land Acquisition Act, 1894 or in accordance with the provisions of the Registration Act, 1908.

[Para 11] [731-G; 732-A]

Patel Gordhandas Hargovindas v. *Municipal Commissioner, Ahmedabad,* [1964] 2 SCR 608, followed.

1.3. Analysing the unamended and amended Section 3(1)(b) of the Act, it is observed that the Legislature has given a great amount of leeway in the matter of taxation. Article 14 does not prohibit classification.

[Para 12] [732-B]

2.1. The classification made between premises occupied by tenants on one hand and those occupied by the owner himself is wholly reasonable and has direct nexus with the object sought to be achieved. The properties occupied by the tenants and the properties which are self occupied constitute two separate classes. The amount of tax on the capital value has been recognized valid by the Constitution Bench of this Court in the judgment of Patel Gordhandas Hargovind vs. Municipal Commissioner, Ahmedabad. Even according to the municipality the rent actually paid by the tenant does form the basis for assessment of house tax, however, the necessity to amend the

A Act arose with the growing demand of citizens for modern basic amenities. The data indicates that the increase in the house tax every five year was negligible. The commercial properties earned higher returns. Therefore, it was decided to amend the law by taking into account the present market value of the land and the initial investment made by the owner when he constructed the house. Moreover, under Section 68 of the Act, once the annual value is B decided in terms of the amended definition then the same shall be valid for five years and on expiry of five years, the annual value is required to be decided as per the wishes of the owner, who may either opt for the method indicated in Section 3(1)(b) of the Act or by increasing it by 10% of the annual value already fixed. On the other hand, in cases where premises are in occupation C of the tenant then as per Section 68 of the Act, the formula to revise the annual value has a direct nexus with the rent revision, if any. In the circumstances, the High Court had erred in holding that the amended Section 3(1)(b) of the Act made an invidious discrimination/distinction between premises in occupation of the tenant and premises which are self occupied.

[Para 15] [733-C, D, E, F, G]

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2.2. The findings of the High Court that Section 3(8aa) of the Act was ultra vires and unconstitutional for want of guidelines which gives wide powers to the officers in the matter of fixing annual value, is equally erroneous. Under the amended Section 3(1)(b) of the Act, a formula has been evolved by which in the case of self occupied premises the tax has to be imposed on annual E value calculated on the basis of the present market value of the land plus the cost of construction minus 10% deduction on account of depreciation. Section 3(8aa) states that while estimating the present market value of the land the Assessing Officer will keep in mind the principles mentioned in the Land Acquisition Act, 1894 whereas under the above formula, the A.O. will keep the registered sale instances of buildings before him in order to compare the F cost of construction of houses in the same locality, area etc. When it comes to land, the A.O. will gather the market value dependant on the sale instances in the surrounding areas. He will keep in mind the principles of 1894 Act for arriving at the market value of the land. On the other hand, under the above formula, which is the composite formula, the A.O. has to take into G account the cost of construction. [Para 16] [733-G; 734-A, B, C]

2.3. There is no straight-jacket formula in matters of valuation. Therefore, leeway has to be given to the A.O. for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the cost H of construction of the houses by invoking the instances of registration on

transfer of houses under the Registration Act. Therefore, the High Court had erred in striking down Section 3(8aa). [Para 16] [734-D, E] A

3.1. The central test for permissible classification has to satisfy two conditions. It must be founded on an intelligible differentia which distinguishes persons or premises that are grouped together from others left out of the groups and the differentia must have a rational relation to the object sought to be achieved by the Act in question. A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid whereas a law based on an impermissible classification violates the guarantee and is void. Equality is violated by treating persons similarly situated differently. In the present case, that is not the case. If a law deals equally with members of a well defined class, it is not open to challenge such a law on the ground of denial of equal protection. In order to sustain the presumption of constitutionality, the court can take into consideration matters of common knowledge and, at the same time, the court must presume that the Legislature understands and correctly appreciates the need of its own people. In the present case, the Legislature seems to have taken cognizance of the fact that the land prices have been increasing which remains excluded from the composite valuation of an asset. Hence, the validity of the impugned Section 3(1)(b) and Section 3(8aa) of the Punjab Municipal Act, 1911, as amended, is upheld. [Paras 17 and 18] [734-E, F, G; 735-A-B] B C D

3.2. Since the validity of Section 3(1)(b) and Section 3(8aa) of the Act is upheld, all pending disputed assessments and appeals therefrom shall be decided in accordance with the provisions of Punjab Municipal Act, 1911, as amended. [Para 22] E

4. It is not open to the High Court under Article 226 of the Constitution, particularly in the matter of taxation to direct the Legislature not to amend the law retrospectively. It is always open to the State Legislature, particularly in tax matters, to enact validation laws which apply retrospectively. The basis of the law can always be altered retrospectively. [Para 21] [736-A, B] F

Per B. Sudershan Reddy, J. (Supplementing): G

1.1. The Constitution is filled with provisions that grant Parliament or to State legislatures specific power to legislate in certain areas. These granted powers are of course subject to constitutional limitations that they may not be exercised in a way that violates other specific provisions of the Constitution. Nothing in the text, history or structure of the Constitution remotely suggest H

A **the High Courts jurisdiction under Article 226 of the Constitution should differ in this respect – that invocation of such power should magically give High Court a free ride through the rest of Constitutional document. If such magic were available the High Court could structure, restructure legislative enactments. The possibilities are endless. The Constitution makers cannot be charged with having left open a path to such total obliteration of**
B **Constitutional enterprise. [Para 3] [736-E, F, G]**

M/s. Narinder Chand Hem Raj and Ors. **v.** *Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors.,* **[1971] 2 SCC 747 and** *T. Venkata Reddy and Ors.* **v.** *State of Andhra Pradesh,* **[1985] 3 SCC 198, relied on.**

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1.2. It is so well settled and needs no restatement that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and of what subject matter the laws are to be made. It is for the legislature to decide as to the nature of operation of the statutes.
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[Para 6] [738-C, D]

M/s. Narinder Chand Hem Raj and Ors. **v.** *Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors.,* **[1971] 2 SCC 747, followed.**

1.3. The court cannot usurp the functions assigned to the legislative
E **bodies under the Constitution and even indirectly require the legislature to exercise its power of law making in particular manner. The court cannot assume to itself a supervisory role for the law making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not**
F **over step the well recognized bounds of its own jurisdiction.**

[Para 9] [741-C, D]

State of Himachal Pradesh **v.** *A Parent of a student of Medical College, Simla and Ors.,* **[1985] 3 SCC 169;** *Asif Hameed and Ors.* **v.** *State of Jammu and Kashmir and Ors.,* **[1989] Suppl. 2 SCC 364 and** *Chandigarh*
G *Administrator and Ors.* **v.** *Manpreet Singh and Ors.,* **[1992] 1 SCC 380, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No.684 of 2003

From the Judgment and Order dated 27.8.2001 of the High Court of
H Punjab and Haryana at Chandigarh in CWP No. 1801 of 1995.

WITH

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Civil Appeal Nos. 685/2003, 686/2003, 687/2003, 690-691/2003, 692/2003, 693-694/2003, 695/2003, 696-698/2003, 699/2003, 700-702/2003,703-704/2003, 705-706/2003, 710-711/2003, 712/2003, 713-714/2003, 715-717/2003, 718/2003, 719/2003, 721/2003, 722/2003, 724/2003, 727-728/2003, 730/2003, 732/2003, 735/2003, 736/2003, 737/2003, 738/2003, 740-744/2003, 757/2003, 758/2003, 759/2003, 760/2003, 761/2003, 762/2003, 763/2003, 764/2003, 765/2003, 766/2003, 767/2003, 768-774/2003, 781/2003, 782/2003, 790/2003, 791/2003, 792/2003, 793/2003, 795/2003, 796/2003, 797/2003, 798/2003, 799/2003, 800/2003, 801/2003, 802/2003, 803/2003, 804/2003, 805/2003, 806/2003, 807-808/2003, 825-828/2003, 1425-1433/2003, 4616-4618/2003, 8426/2003, 4329/2004 and C.A Nos. 3386, 3387, 3388/2007.

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C

K.K Venugopal, R.N. Trivedi, Jaideep Gupta, Rajiv Dutta, Anant Vijay Palli, Rekha Palli, Krishan Venugopal, Liz Madhavi, Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra, R.S. Suri, Arun K. Sinha Rajiv K.Garg, Ashish Garg, Annam D.N. Rao, R.D. Upadhyay, A.S. Chahil, S. Janani and Naresh Bakshi, K.K. Mohan, Pradeep Gupta, Suresh Bharati, Ajit Pudussery, K.Vijayan, Harinder Mohan Singh, K.L.Taneja, A.P. Mohanty, Ajay Majithia, Rajesh Kumar, Dr. Kailash Chand, Anil K.Jha, A.K. Jha, P.N. Puri, A.V. Rangam, Buddy A. Ranganadhan, B.K. Satija, Vipin Gogia, Jaspreet Gogia, K.K. Gogia, Vijay Kumar, Ashwani Kumar, A.P. Dhamija, E.C. Vidya Sagar, Gopal Sankaranarayanan, Meet Malhotra, Shashi M. Kapila, S. Kaushi, Indu Malhotra, Sureshta Bagga, Rajesh Mahale, Pratibha Jain, Kawaljit Kochar, Kusum Chaudhary, Sharmila Upadhyay, Vishnu Mehra, Sakshi Mittal, Pramod Dayal, Nikunj Dayal, Shiv Prakash Pandey, Madhu Moolchandani, M.T. George, M.F. Humayunisa, Kumar Dushyant Kumar Singh, R. Nedumaran and Anil Kumar Sangal for the appearing parties.

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The Judgment of the Court was delivered by

KAPADIA, J. 1. Leave granted.

2. The short point involved in this batch of civil appeals is whether the High Court was right in holding that Section 3(1)(b) which defines "annual value" and Section 3(8aa) which defines "market value" in the Punjab Municipal Act, 1911 ("the said Act") as substituted by Punjab Amending Act 11 of 1994 suffers from the vice of discrimination and, therefore, they are unconstitutional. We have before us a batch of civil appeals. For the sake of convenience, we

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A reproduce hereinbelow the facts in the case of Civil Appeal No. 684/03 in the case of *Municipal Committee, Patiala* v. *Model Town Residents Asson. & Ors.*.

3. At the outset, we may state that under Section 71(1) of the said Act the State Government has given exemption to the self occupied residential B houses from the payment of house tax. Therefore, the grievance is confined to the payment of house tax by self occupied commercial premises.

4. Before examining the grounds of challenge, we quote hereinbelow the unamended Section 3(1) of the said Act:

C "3. Definition.- In this act, unless there is something repugnant in the subject or context-

(1) 'annual value' means-

(a) in the case of land, the gross annual rent at which it may reasonably D be expected to let from year to year.

Provided that in the case of land assessed to land revenue or of which the land revenue has been wholly or in part released, compounded for, redeemed or assigned, the annual value shall if, the State Government so direct, be deemed to be double the aggregate of the following E amounts, namely:

(i) The amount of the land revenue for the time being assessed on the land, whether such assessment is leviable or not; or when the land revenue has been wholly or in part compounded for or redeemed, the amount which, but for such composition, or redemption would have F been leviable and

(ii) When the improvement of the land due to canal irrigation has been excluded from account in assessing the land revenue the amount of owner's rate or water advantage rate or other rate imposed in respect of such improvement;

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(b) In the case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment forthwith, may reasonably be expected to let from year to year subject to the following deductions;

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(i) such deduction not exceeding 20 per cent of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith; A

(ii) a deduction of 10 percent for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under Sub-clause (i); B

(iii) where the land is let with a building, such deduction not exceeding 20 percent of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent; C

Explanation-I- For the purpose of this clause, it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts and if by different contracts whether such contracts are made simultaneously or at different times. D

Explanation-II.- The term "gross annual value" shall not include any tax payable by the owner in respect of which the owner and tenant have agreed that it shall be paid by the tenant. E

(c) in the case of any house or building, the *gross annual rent* of which cannot be determined under Clause (b), 5 per cent of the sum obtained by adding the estimated present cost of erecting the building, less such amount as the committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building; F

Provided that-

(i) In the calculation of the annual value of any premises no account shall be taken of any machinery thereon. G

(ii) when a building is occupied by the owner under such *exceptional circumstances* as to tender a valuation at 5 per cent on the cost of erecting the building, less depreciation, excessive a lower percentage may be taken." (emphasis supplied)

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A 5. We also quote hereinbelow the substituted Sections 3(1) and 3(8aa) of the said Act by Punjab Amending Act No. 11 of 1994.

"3. Definitions.- In this Act, unless there is something repugnant in the subject or context.-

B (1) 'annual value' means-

(a) in the case of land or building which is in the occupation of a tenant, the *gross annual rent* at which the land or building has actually been let.

C Provided that in the event of increase in the rent, the Committee may make corresponding increase in the annual value;

Provided further that where the land or building has been let by he owner to any of his relations and the Committee is of the opinion that the rent fixed does not represent the true rent, the rent fixed under the agreement of lease shall not be taken into consideration and the D annual value shall be determined in accordance with the principles contained in Clause (b);

(b) in the case of land or building which is occupied by the owner, the annual value shall be five per cent on the sum obtained by adding the present market value of the land and estimated cost of erecting E the building less ten per cent depreciation;

Provided that in the calculation of annual value of any land and building, no account shall be taken of the furniture or machinery thereon;

F (c) in the case of any land on which no building has been erected but on which a building can be erected, and on any land on which a building is in the process of erection, the annual value shall be fixed at five per cent of the estimated market value of such land;

(d) in the case of any land on which no building has been erected but G on which a building can be erected, or which is partially built and is being used by erecting tenants, temporary structures for the purpose of accommodating marriage parties, circus shows or for any entertainment purposes or such other purpose as may be specified in this behalf by the committee with the previous sanction of the state

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government the annual value shall be twenty per cent of the estimated market value of such land. A

(emphasis supplied)

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3(8aa) 'market value' means the market value of the land or the building which is determined in accordance with the principles contained in Section 23 of the Land Acquisition Act, 1894, or as determined in accordance with the provisions of the Registration Act, 1908." B

6. At this stage, we may state that the validity of the above Punjab Amending Act 11 of 1994 was challenged on two grounds, namely, regarding competency of the State Legislature to impose tax and on the ground of discrimination being violative of Article 14 of the Constitution. Suffice it to state that the petitions of the assessees on the point of competency of the Legislature to impose the tax has been dismissed by the High Court and, therefore, in the present case, we are concerned only with the question as to whether Punjab Amending Act 11 of 1994 makes an arbitrary classification between self occupied residential houses and self occupied commercial houses in the matter of taxation under the said Act. According to the assessees, the said classification between the above two categories was not only discriminatory but it has no rational basis with the object sought to be achieved and, therefore, the above two sub-sections, namely, Section 3(1)(b) and 3(8aa) violated the assessees fundamental rights under Article 14 of the Constitution. C D E

7. According to the assessees, the distinction made between land or building in occupation of the tenant on one hand and the land or building occupied by the owner, for the purposes of determination of annual value, for imposition of house tax, is per se discriminatory and violative of Article 14 of the Constitution. According to the assessees, the classification of land or building with reference to their occupation by the tenant or owner is wholly arbitrary having no nexus with the object of determination of annual value for levy of house tax under the impugned sections. According to the assessees, by virtue of the impugned amended definition of annual value, two properties having similar area, cost and quality of construction and situation will be subjected to house tax at different rates simply because one is occupied by the tenant and the other is occupied by the owner. It is submitted by the F G

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A assessees that this differentiation has no rational relation with the object of enactment, namely, determination of annual value for levy of house tax. According to the assessees, Section 3(8aa) was also unconstitutional as the Legislature has not indicated any guidelines for determination of the market value in accordance with the principles contained in Section 23 of the Land Acquisition Act, 1894 or in accordance with the provisions of the Registration B Act, 1908. According to the assessees, determination of the market value cannot be left to the sweet will of the municipality and in the absence of said guidelines, the said Section 3(8aa) be declared as unconstitutional.

8. The above contentions have been accepted by the High Court, which C has struck down Section 3(1)(b) and Section 3(8aa) of the Punjab Municipal Act, 1911, as amended. The short question which requires consideration is whether Section 3(1)(b) and Section 3(8aa) are violative of the rule of equality in the matter of determination of annual value as basis for imposition of house tax.

D 9. Before examining the question of constitutional validity, we need to take note of certain concepts under municipal taxation. Value is the function of price. Value is the function of the economy. Valuation is subjective exercise. Valuation involves an element of guess work. Valuation does not involve straight-jacket formula. Broadly, the following methods merit attention in the determination of Fair Market Value ("FMV") they are: (a) net asset method; E (b) multiple based method; and (c) discounted cash-flow method. The word "rate" has acquired a special meaning. It means a tax for local purposes imposed by local authorities. The basis of the tax is the annual value of the land or building on which it is imposed. The annual value is arrived at by three ways, namely, (i) actual rent fetched by the land or building where it is F actually let; (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings; and (iii) where either of these two methods is not available, by valuation based on capital value from which annual value has to be derived by applying a suitable percentage which may not be the same for lands and buildings.

G 10. In the case of *Patel Gordhandas Hargovindas* v. *Municipal Commissioner, Ahmedabad,* reported in [1964] 2 SCR 608 the Constitutional Bench of this Court took the view that there was no authority for the proposition that the word "rate" indicated a levy on the basis only of annual value of property. In our country, the words "tax" and "rates" have been used by the Legislatures to indicate the impost and in some cases the Legislature H

has permitted a local authority to levy "property tax" at a percentage of its (land and building) capital value. In the said judgment, the Constitutional Bench of this Court has held that there were three methods for arriving at rateable value. Where the land or building was actually let, the valuation based on the rent actually charged is the proponent. Where land or building is not let, then there were two methods for finding out the rateable value. The first was to assume a hypothetical tenancy and to find out the rent at which the premises would be let. The second was based on capital value of the premises. However, in the second case the tax is not levied on the capital value itself, the capital value of the house to be assessed by contractors method, in addition to the market value of the land. This second method has been accepted as constitutionally valid in the above decision of this Court in the case of *Patel Gordhandas* (supra). It is this second method which has been introduced in the Punjab Municipal Act, 1911 by insertion of Punjab Amending Act 11 of 1994. Therefore, the word "rate" has always been construed to mean a tax on the annual value or rateable value of lands or buildings and it is this annual value or rateable value which is arrived at by one of the modes indicated above.

11. Applying the above tests to the present case, we find that prior to the Amending Act of 1994, annual value was defined to mean the gross annual rent at which the house or building could be let from year to year subject to statutory deductions [see unamended Section 3(1)(b)]. Therefore, under the unamended section the tenanted as well as self-occupied premises stood equated in the matter of determination of the gross annual rent. However, even under the unamended Act, vide Section 3(1)(c) it was stipulated that if in a given case it was not possible for the municipality to determine the gross annual rent, then, 5% of the total sum obtained by adding the estimated present cost of construction, less such amount as the Committee may deem fit to be deducted on account of depreciation to the estimated market value of the land (site). Therefore, even under the unamended section, in marginal cases, it was open to the municipality to fix the annual value at 5% of the sum obtained by adding the cost of construction to the market value of the land. It appears that on account of increase in the market price of the land in question that the State Legislature amended Section 3(1) by Punjab Amending Act 11 of 1994 by which it had been stipulated vide Section 3(1)(b) that in cases where land or building is self occupied, the annual value shall be 5% of the sum obtained by adding the present market value of the land and the estimated cost of construction less 10% deduction on account of

A depreciation. By the said amendment it had been laid down under Section 3(8aa) that the word "market value" of the land or building shall be determined in accordance with the principles in Section 23 of the Land Acquisition Act, 1894 or in accordance with the provisions of the Registration Act, 1908.

12. Analysing the unamended and amended Section 3(1)(b) of the said B Act, we are of the view that the Legislature has given a great amount of leeway in the matter of taxation. Article 14 does not prohibit classification. As stated above, in cases where the property is actually let out and it is possible to decide the annual value on the basis of actual rent then the annual value is equated to the gross annual rent at which the land or building has actually C been let [see Section 3(1)(a) as amended]. The difficulty comes in when the land or building is self occupied by the owner and it is not possible to arrive at the annual value in the absence of actual rent and it is in those cases that the Legislature has prescribed the method of calculating the annual value at 5% on the sum obtained by adding the present market value of the land plus the estimated cost of construction of the building minus 10% as deduction D on account of depreciation.

13. It had been vehemently urged on behalf of the assessees that there is no rational basis for making the above classification, particularly when both the premises, whether let out or self occupied, are subject to rent restrictions under the Punjab Rent Act.

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14. It is urged on behalf of the municipality that Section 3(1)(b), as amended, makes no distinction between self occupied land or building and tenanted land or building. According to the municipality, after the amendment, the annual value in occupation of the tenant has to be determined on the F basis of actual rent which the property would fetch whereas if the same property is in occupation of its owner then the rateable value under the amended provisions shall be calculated by applying the rate of 15% of the 5% of the sum determined in accordance with Section 3(1)(b). For example, if the value of the property is Rs. 10 lacs (which comprises of the market value of the land plus cost of construction of the structure) then the annual value G in terms of Section 3(1)(b) shall be Rs. 50,000/- at the rate of 5% of the market value. If the property is a commercial property, then the tax shall be 15% of Rs.50,000/- equal to Rs. 7,500/- which comes to .75% of the value (Rs. 10 lacs). At this stage, it may be stated that residential property is exempted from tax, therefore, we are not required to go into those figures. Essentially, in this case H we are concerned with commercial property. It is the tax on the scarce resources,

mainly the land whose prices are escalating, which provides an intelligible differentia (rational basis) having requisite connection with the object sought to be achieved. There cannot be a straight-jacket formula for determination of the annual value. The State is always entitled to raise resources by way of imposition of tax. As held in the case of *Patel Gordhandas* (supra) cost of construction plus market value of the land thus constituted the very basis for determination of the annual value, where it is not possible to obtain figures concerning actual rent or hypothetical rent, it is in these circumstances that the cost of construction plus the market value of the land can form the basis for arriving at the annual value.

15. In our view, the classification made between premises occupied by tenants on one hand and those occupied by the owner himself is wholly reasonable and has direct nexus with the object sought to be achieved. In our view, properties occupied by the tenants and properties which are self occupied constitute two separate classes. The amount of tax on the capital value has been recognized valid by this Court in the judgment of *Patel Gordhandas* (supra). Even according to the municipality the rent actually paid by the tenant does form the basis for assessment of house tax, however, the necessity to amend the Act arose with the growing demand of citizens for modern basic amenities. The data indicates that the increase in the house tax every five year was negligible. The commercial properties earned higher returns. Therefore, it was decided to amend the law by taking into account the present market value of the land and the initial investment made by the owner when he constructed the house. Moreover, under Section 68 of the Act, once the annual value is decided in terms of the amended definition then the same shall be valid for five years and on expiry of five years, the annual value is required to be decided as per the wishes of the owner, who may either opt for the method indicated in Section 3(1)(b) or by increasing it by 10% of the annual value already fixed. On the other hand, in cases where premises are in occupation of the tenant then as per Section 68 of the Act, the formula to revise the annual value has a direct nexus with the rent revision, if any. In the circumstances, the High Court had erred in holding that the amended Section 3(1)(b) made an invidious discrimination/distinction between premises in occupation of the tenant and premises which are self occupied.

16. In the present case, the High Court has further held that Section 3(8aa) was ultra vires and unconstitutional for want of guidelines which gives wide powers to the officers in the matter of fixing annual value. This finding of the High Court is equally erroneous. Under the amended Section 3(1)(b),

A as stated above, a formula has been evolved by which in the case of self occupied premises the tax has to be imposed on annual value calculated on the basis of the present market value of the land plus the cost of construction minus 10% deduction on account of depreciation. Section 3(8aa) states that while estimating the present market value of the land the Assessing Officer ("A.O.") will keep in mind the principles mentioned in the Land Acquisition B Act, 1894 whereas under the above formula, the A.O. will keep the registered sale instances of buildings before him in order to compare the cost of construction of houses in the same locality, area etc. When it comes to land, the A.O. will gather the market value dependant on the sale instances in the surrounding areas. He will keep in mind the principles of Land Acquisition C Act, 1894 for arriving at the market value of the land. On the other hand, under the above formula, which is the composite formula, the A.O. has to take into account the cost of construction. This is because the building might have been constructed ten years ago. In such cases, the A.O. shall keep in mind the cost of construction prevailing in the area when the house was constructed. For such an exercise, the A.O. has to refer to the instances mentioned to D properties registered under the Registration Act. As stated above, there is no straight-jacket formula in matters of valuation. Therefore, leeway has to be given to the A.O. for arriving at the market value of the land and the cost of construction by applying apposite principles under the Land Acquisition Act qua the land and by proceeding to arrive at the cost of construction of E the houses by invoking the instances of registration on transfer of houses under the Registration Act. Therefore, in our view, the High Court had erred in striking down Section 3(8aa).

17. The central test for permissible classification has to satisfy two conditions. It must be founded on an intelligible differentia which distinguishes F persons or premises that are grouped together from others left out of the groups and the differentia must have a rational relation to the object sought to be achieved by the Act in question. A law based on a permissible classification fulfils the guarantee of the equal protection of the laws and is valid whereas a law based on an impermissible classification violates the G guarantee and is void. Equality is violated by treating persons similarly situated differently. In the present case, as stated above, that is not the case. If a law deals equally with members of a well defined class, it is not open to challenge such a law on the ground of denial of equal protection. In order to sustain the presumption of constitutionality, the court can take into consideration matters of common knowledge and, at the same time, the court

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must presume that the Legislature understands and correctly appreciates the need of its own people. In the present case, the Legislature seems to have taken cognizance of the fact that the land prices have been increasing which remains excluded from the composite valuation of an asset, namely, land or building which is self occupied and for which there is no measurable, identifiable and quantifiable data of actual or hypothetical rent.

18. For the aforestated reasons, we uphold the validity of the aforesaid impugned Section 3(1)(b) and Section 3(8aa) of the Punjab Municipal Act, 1911, as amended.

19. On behalf of the assessees, a number of judgments of this Court were cited in the matter of fixation of standard rent. In our opinion, the said citations are not relevant. In this case we are concerned with constitutional validity of the impugned Sections 3(1)(b) and 3(8aa). In the present case, we have held that it is open to the Legislature to introduce the composite scheme for determination of annual value based on cost of construction plus market value of the land, therefore, the judgments of this Court in the matter of fixation of standard rent has no relevance.

20. Before concluding, we have serious objections to the manner in which direction has been given by the Division Bench of the High Court to the Legislature. In this connection, we quote the last paragraph of the impugned judgment, which is as follows:

> "... Sections 3(1)(b) and 3(8aa) of the Act are declared unconstitutional and struck down.... The State shall be free to suitably amend Section 3(1) to provide for levy of house tax by adopting a uniform criteria for determination of annual value of similarly situated properties. The State shall also be free to amend Section 3(1) and lay down a uniform criteria for determination of annual value of properties occupied by the tenants as well as the owners in the light of the judgment of the Supreme Court in *Sachidanand Kishore Prasad Sinha's* case [1995] 3 SCC 86 and observations made in this order. *It is, however, made clear that any such enactment shall not effect the assessments made prior to the amendment of section 3 by Punjab Act No. 11 of 1994 and the old cases, if any pending shall be decided in accordance with the unamended provision...*" (emphasis supplied)

21. In the above judgment, the High Court directs the State Legislature to amend the law relating to determination of annual value by classifying that

A any such amendment shall not be retrospective. We have serious reservations regarding such a direction. It is not open to the High Court under Article 226 of the Constitution, particularly in the matter of taxation directing it not to amend the law retrospectively. Such a direction is unsustainable, particularly in a taxing statute. It is always open to the State Legislature, particularly in tax matters, to enact validation laws which apply retrospectively. The High B Court cannot take away the power of the State Legislature to amend the tax law retrospectively. The basis of the law can always be altered retrospectively.

22. For the aforestated reasons we set aside the impugned judgment. We declare the aforestated Section 3(1)(b) and Section 3(8aa) as valid. C Accordingly, we uphold the validity of the said sections. Since we have upheld the validity of the aforestated impugned sections we make it clear that all pending disputed assessments and appeals therefrom shall be decided in accordance with the provisions of Punjab Municipal Act, 1911, as amended. The civil appeals filed by Patiala Municipal Committee as well as the State Government are allowed with no order as to costs.

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B. SUDERSHAN REDDY, J. 1. While I entirely agree with my esteemed brother Kapadia, J. in the judgment proposed to be delivered by him, I wish to add particularly to supplement what he has said to the topic of separation of powers.

E 2. My excuse for inflicting this epilogue is for obvious reasons.

3. The Constitution is filled with provisions that grant Parliament or to State legislatures specific power to legislate in certain areas. These granted powers are of course subject to constitutional limitations that they may not be exercised in a way that violates other specific provisions of the Constitution. F Nothing in the text, history or structure of the Constitution remotely suggest the High Courts jurisdiction under Article 226 of the Constitution should differ in this respect - that invocation of such power should magically give High Court a free ride through the rest of Constitutional document. If such magic were available the High Court could structure, restructure legislative G enactments. The possibilities are endless. The Constitution makers cannot be charged with having left open a path to such total obliteration of Constitutional enterprise.

4. In *M/s. Narinder Chand Hem Raj and Ors.* v. *Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Ors.*, [1971] 2 SCC 747 H a writ of mandamus was sought by the petitioners from enforcing levy of

sales tax on the sale of liquor. This Court held that the appellants were liable to pay tax imposed under the law. The appellants in reality wanted a mandate from court to the competent authority to delete the certain entry from Schedule A and include the same in Schedule B. The court proceeded to hold:

> "The power to impose a tax is undoubtedly a legislative power, that power can be exercised by the Legislature directly or subject to certain conditions the Legislature may delegate that power to some other authority. But the exercise of that power , whether by the Legislature by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. *No court can issue a mandate to a Legislature to enact a particular law. Similarly no court can direct a subordinated legislative body to enact or not to enact a law which it may be competent to enact.* The relief as framed by the applicant in his Writ Petition does not bring out the real issue calling for determination. In a reality he wants this court to direct the Government to delete the entry in question from Schedule A and include the same in Schedule B. Article 265 of the Constitution lays down that no tax can be levied and collect except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. *No court can give a direction to a Government to refrain from enforcing a provision of law.* [Emphasis supplied]

5. In *T. Venkata Reddy and Ors.* v. *State of Andhra Pradesh,* [1985] 3 SCC 198, a constitution bench of this court while considering the question as to whether it is permissible to strike down an Ordinance which has the same force and effect or an Act of Parliament or an Act of State Legislature on the ground of non-application of mind or malafides or that the prevailing circumstances did not warrant the issue of an Ordinance held that validity of an Ordinance cannot be decided on grounds similar to those on which an executive or judicial action is decided. It is observed :

> "Any law made by the Legislature, which it is not competent to pass, which is violated of the provisions in Part III of the Constitution or any other constitutional provision is ineffective. It is a settled rule of constitutional law that the question whether a statute is constitutional

A or not is always a question of power of the Legislature concerned, dependant upon the subject matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative B discretion is properly exercised. The motive of the Legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. *The propriety, expediency and necessity of a legislative act are for the determination of the legislative* C *authority and are not for determination by the courts.*"

6. It is so well settled and needs no restatement at our hands that the legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and of what subject matter the laws D are to be made. It is for the legislature to decide as to the nature of operation of the statutes.

7. In *State of Himachal Pradesh* v. *A Parent of a student of Medical College, Simla and Ors.*, [1985] 3 SCC 169, the High Court of Himachal Pradesh required the State Government to initiate legislation against ragging E in educational institutions and for this purpose time of six weeks was granted to the State Government. The decision was challenged before this court. This court was of the opinion that the direction given by the division bench was nothing short of an attempt to compel the State Government to initiate legislation with a view to curb the evil of ragging. It is held :

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"...........It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or G desirable the court may consider it to be. That it is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. If the executive is not carrying out any duty laid upon it by the Constitution or the law, the court can certainly require the executive to carry out such duty and this is precisely what the court does when it entertains public interest

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litigation. Where the court find, or being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continued to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them. the court certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realize their social and economic rights. When the court passes any orders in public interest litigation, the court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the constitution and the law, because it is vital for the maintenance of the rule of law that the obligations which are laid upon the executive by the Constitution and the law should be carried out faithfully and no one should go away with a feeling that the Constitution and the law are meant only for the benefit of a fortunate few and have no meaning for the large members of half-clad, half-hungry people of this country. That is a feeling which should never be allowed to grow. *But at the same time the court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law making activities of the executive and the legislature."* [Emphasis supplied]

8. In *Asif Hameed and Ors.* v. *State of Jammu and Kashmir and Ors.*, [1989] Suppl. 2 SCC 364, this court had an occasion to have a fresh look on the inter-se functioning of the three organs of democracy under our Constitution. It is held :

"17. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the Constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution.

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No organ can usurp the function assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strange and independents of each of its organ. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restrain, the only check on our own exercise of power is the self-imposed discipline of judicial restraint.

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18. Frankfurter[1], J. of the U.S. Supreme Court dissenting in the controversial expatriation case of Trop vs. Dulles observed as under:

"All power is, in Madison's phrase, "of an encroaching nature". Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and nor the less so since the only restraint upon it is self-restraint....

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Rigorous observance of the difference between limits of power and wise exercise of power - between questions of authority and questions of prudence - requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere of the difference. It is not easy to stand aloof and allow want to wisdom to prevail to disregard once own strongly held view of what is wise in the conduct of affairs. But it is not the business of this court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the courts giving effect to its own notion of what is wise of politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of

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1. 356 US 86

what Congress and the executive branch do." A

19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within B its self imposed limits. The court sits in judgment of the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any C matter which under the Constitution lies within the sphere the legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

9 The court cannot usurp the functions assigned to the legislative bodies under the Constitution and even indirectly require the legislature to D exercise its power of law making in particular manner. The court cannot assume to itself a supervisory role for the law making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not over step the well recognized bounds of its own jurisdiction.

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10. In *Chandigarh Administrator and Ors.* v. *Manpreet Singh and Ors.*, [1992] 1 SCC 380, the High Court while disposing of a petition under Article 226 of the Constitution changed the categorization and order of priority specified in the Rule framed by the University for giving admissions to engineering colleges. The Supreme Court while reversing the decision observed:

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".......if the High Court thought that this categorization was discriminatory and bad it ought to have struck down the categorization to that extent and directed the authority to reframe the rule. It would then have been upon to the rule making authority either to merge these two categories or delete one or both of them, depending upon G the opinion they would have formed on a review of the situation. We must make it clear again that we express no opinion on the question of validity or otherwise of the rule. We are only saying that the High court should not have indulged in the exercise of 'switching' the categories - and that too without giving any reasons thereafter. Thereby,

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A it has practicably assumed the role of rule making authority, or, at any rate, assumed the role of an appellate authority. That is clearly not the function of the High Court acting under Article 226 of the Constitution of India."

11. The High Court's directions to make the law in a particular manner B are clearly unsustainable.

12. I agree with S.H. Kapadia, J. that the appeals preferred by the State as well as Municipal Committee, Patiala should be allowed.

S.K.S. Appeal allowed.