(23) For the foregoing reasons, with all due deference, we are unable to endorse the view taken by the learnd Single Judges in Criminal Originals 38-M of 1971, 61-M of 1971 and Criminal Writ 10 of 1971. We are, however, in respectful agreement with the view taken by the learned Single Judge in *Prisoner Raghbir Singh* v. *State of Punjab* (5) (supra).

(24) In the result, all the nine writ petitions fail, and are dismissed.

MITAL, J.—I agree.

*K. S. K.*

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli and Pritam Singh Pattar, JJ.*

NIHAL SINGH ETC.,—*Petitioners.*
*versus.*

THE STATE OF HARYANA ETC.,—*Respondents.*

**Civil Writ Petition No. 2089 of 1974**

September 17, 1974.

*Haryana Land Holdings Tax Act (XVIII of 1973 as amended)—Sections 2, 3, 5, 6 and 7—Aggregation of lands owned by the members of a family for raising increased revenue—Whether violative of Article 14—State Government—Whether competent to provide for such aggregation—Section 3 as amended—Whether provides for the aggregation of the land of all the members of a family.*

*Held,* that there is no inequality between a family and a family or the provision with regard to aggregation. The land of all members of a family, as defined in Haryana Land Holdings Tax Act, 1973, is aggregated and the tax is levied on the aggregated holding. There is no comparison between an aggregate of holdings of all the members of a family and the aggregated land held by an individual. Both stand on a different footing and are two distinct classes for the purposes of taxation. The classification made by the Legislature is not unreasonable. It is open to the Legislature to prescribe taxable units, the taxing event and the rate of tax. The Courts cannot interfere if they are clearly stated and are ascertainable. The aggregation of the land of the members of a family consisting of the husband, the wife and their minor children is also not irrational or unreasonable. The land of the wife and the minor children is generally managed and cultivated

by the husband or the father of the minor children. In view of the impending legislation concerning ceiling on land both in Punjab and Pepsu, the owners of land had made gifts in favour of their wives and children. By aggregation of lands held by all the members of the family, the purpose of the Act to obtain larger revenue from larger holdings is achieved. If an individual holds a large holding, he is also similarly liable to pay higher tax in accordance with the slab system. An individual, who is not a member of a family, cannot, therefore, be equated with an individual, who is a member of the family, in view of the various advantages available to the latter. The joint cultivation of large tracts of land is more economical than the separate cultivation of small holdings by individual landowners. Again, it is not the husband who has to pay the higher tax in lieu of the tax payable by his wife and the minor children but the tax has to be paid by the landowners as is provided in sections 6 and 7 of the Act. According to the definition of 'landowner' in section 3(2) of the Punjab Land Revenue Act, 1887, which applies to "landowner" as used in the Act by virtue of section 2(k) of the Act, a person in occupation or in the enjoyment of any part of the profits of an estate is landowner. He may not be the owner of the land, like a mortgagee with possession or a person to whom the land has been farmed in proceedings for the recovery of land revenue or any amount recoverable as land revenue or in any other capacity except that of a tenant or an assignee of land revenue. The aggregation of the land holding of all the members of a family will only be for the purpose of calculating the tax on that particular land holding and not for charging it from one person unless he happens to be the sole landowner. The taxable unit is determined on the basis of ownership while the tax is to be paid by the landowner, that is, the person in possession of the whole or a part of the land holding or in the enjoyment of the whole or a part of the profits thereof. The burden of the tax does not fall on the owner of the land holding unless he is the landowner also, that is, in possession of the entire holding. Hence the aggregation of land owned by the members of a family for raising increased revenue is not violative of Article 14 of the Constitution of India. Wider discretion is allowed to the State in the matter of classification under the power of taxation than under its police power. One reason for this wider discretion, undoubtedly, is the urgent need for revenue by the various Governmental agencies. A State does not have to tax every thing in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably. (Paras 6, 9 and 12)

*Held*, that under the amended section 3 of the Act, land holding means the aggregate of all land owned by a person or a family in a particular estate. It has no reference to the members of the family holding land in their individual names as was the case in the original section 3. The concept of family as a land-holding unit was known to the Legislature before the enactment of the Act as it had been used in the Haryana Ceiling on Lands Holdings Act, 1972. Under that Act, the primary land-holding unit was prescribed as a family and only those persons, who had no families or were incapable of having families like juristic persons, were treated as

individual holders of land. It cannot, therefore, be said that family, as defined in the Act, was unknown to the law or the Legislature before its enactment. Almost the same definition of family was adopted in both the Acts which really formed a series of enactments on the same subject-matter. It is true that while construing the provisions in a particular statute, reference to another statute is not permissible but it is permissible where a series of statutes relating to the same subject-matter are involved. The kind of family dealt with in the Act having been known to law and having been made the unit of land holding in an earlier Act by the same Legislature, it is legitimate to presume that when in section 3 of the Act, as amended, the land holding owned by a family is mentioned, it refers to the land holding of the family as such and not the land holding of the individual members constituting it. It is the cardinal principle of interpretation of fiscal statutes that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the statute seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. If any word has to be supplied to give meaning to the word 'family' in section 3 of the Act, as amended, a word which will help the interpretation in favour of the subject will be supplied in preference to a word which will help the interpretation in favour of the State. Hence the land owned by a family means the land held and owned by a family as such collectively and not by its members individually and, therefore, although the State Government can make the provision for aggregating the lands owned or held by individual members of the family for the purpose of determining the land holding on which tax is to be levied, section 3 of the Act, as now in force, does not provide for that aggregation. **(Paras 14 and 22)**

*Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari mandamus or any other appropriate writ, order or direction be issued strucking down the Act as well as the Rules being the ultra vires of the Constitution of India, and further praying that the recovery of land holding tax from the petitioners be stayed during the pendency of the writ petition.*

A. S. Nehra, and K. R. Chaudhry, Advocates, *for the petitioners.*

J. N. Kaushal, Advocate General, Haryana with C. D. Dewan, Additional Advocate-General, Haryana, *for the respondents.*

K. P. Bhandari, and I. B. Bhandari, Advocates as intervener.

## JUDGMENT

Judgment of the Court was delivered by :—

TULI, J.—This petition under Article 226 of the Constitution of India challenges the constitutional validity of some of the provisions

of the Haryana Land Holdings Tax Act, 1973 (hereinafter referred to as the Act), which was published in the Haryana Government Gazette (Extraordinary) dated April 27, 1973. By notification dated August 30, 1973, issued by the Governor of Haryana, in exercise of the powers conferred by sub-section (3) of section 1 of the Act, the Act was brought into force with effect from that date. However, the Haryana Land Holdings Tax (Amendment) Ordinance, 1973, amended sub-section (3) of section 1 as a result of which the Act came into force on June 16, 1973. The Governor of Haryana, in exercise of the powers conferred by section 13 of the Act, made the rules called the Haryana Land Holdings Tax Rules, 1973, (hereinafter referred to as the Rules), which were published in the Haryana Government Gazette (Legislative Supplement) dated Novembre 13, 1973. The Haryana Land Holdings Tax (Amendment) Ordinance (No. 1 of 1974) added section 5A to the Act, omitted sub-section (2) of section 11 and substituted Schedule 1 to the Act by a new Schedule. Lastly, on August 30, 1974, the Haryana Land Holdings Tax (Second Amendment) Ordinance (No. 5 of 1974) was promulgated by the Governor of Haryana which substituted clause (i) of section 2 and section 3 of the Act by new provisions.

(2) This petition had been filed before the Haryana Ordinance No. 5 of 1974 was promulgated and, therefore, its provisions could not be challenged. It has been heard along with many other similar writ petitions. All the counsel for the writ-petitioners prayed for time to amend their petitions so as to challenge the provisions made by the Ordinance but we have permitted them to argue the points without formally amending the petitions. The cases have thus been argued at length by the learned counsel for the parties on all the aspects of the Act but no arguments have been addressed as to the invalidity of any rule. All the amendments made by the Ordinances in the Act have been brought into force with effect from June 16, 1973, which is the date on which the Act came into force and, therefore, all the provisions of the Act, as amended to-date, have to be considered as being in force with effect from June 16, 1973.

(3) Before dealing with the merits of this petition, I may point out that there are 136 petitioners who have filed this joint petition but none of them has given the particular facts of his or her case and the provisions of the Act have been challenged in the abstract without indicating how those provisions affect their rights in their

land holdings. The provisions of the Act have been challenged as violative of Article 14 of the Constitution on all imaginable and hypothetical grounds, whether they in fact exist or not. In my view, before a petition challenges the *vires* or the constitutional validity of an Act, it is his duty to state the facts of his own case and to plead how the provisions of the impugned Act affect his fundamental or legal rights so as to enable the Court to pronounce on the validity of those provisions. A person, who is not in any way affected adversely by the provisions of an Act, has no *locus standi* to challenge them *pro bono publico*. We have waived this rule and decided to hear all these petitions together so as to facilitate the decision of more than eight hundred writ petitions that have been filed in this Court challenging the *vires* of the Act but it should not be taken as a precedent for future cases.

(4) Before dealing with the arguments of the learned counsel, it will be useful to set out the relevant provisions of the Act. The statement of objects and reasons reads as under:—

"Statement of Objects and Reasons.

The State Government levied different charges under the various Acts to supplement its income realised as land revenue. Some of these charges were (i) Surcharge, under the Punjab Land Revenue (Surcharge) Act, 1954; (ii) Special Charge, under the Punjab Land Revenue (Special Charges) Act, 1958; (iii) Additional Surcharge, under the Haryana Land Revenue (Additional Surcharge) Act, 1969; and (iv) Cess on Commercial Crops, under the Punjab Commercial Crops Cess Act, 1963, and so on. This was done obviously to claim increased share of produce of land for the State, from the landowners who had been the direct beneficiaries of the huge investments made by the State in various developmental activities, viz., irrigation projects, rural electrification to facilitate multiplication of minor irrigation, Agricultural University and other facilities to cultivators, etc.

(2) With the passage of time it has been felt that the collection of all these charges was not only cumbersome for the Revenue agency which had to maintain separate accounts under various heads; but it was equally cumbersome for the cultivator also. To set right this unsatisfactory state of affairs, it has been decided to consolidate

all such levies into a single Tax to be known as 'Land Holding Tax'.

(3) The Central Government had appointed a committee known as ('Raj Committee') some time back to suggest measures so that income from the land revenue, etc., is increased substantially in view of the undoubted increases in agricultural production and in the context of reasons given above in para 1. This committee made various recommendations of which the salient features are that (a) for the purpose of collection of any land tax there should be an element of progression; and (b) the 'unit holding' should be the family holding. An attempt has now been made to incorporate both these concepts in the proposed Bill to the extent found feasible in the prevailing conditions in this State. The net result is that the new tax, known as 'Land Holding Tax' is proposed to be levied in the State and this would replace the various taxes, cesses, etc., indicated above and other levies. Hence this Bill.

The statutory provisions, as amended todate, which are relevant for the decision of the various points raised in these cases are the following:—

"*Section* 2(*d*) 'family' means husband, wife and their minor children, or any two or more of them;

Explanation—A married daughter shall not be treated as a child;

2(*g*) 'land holding' shall have the meaning assigned to it in section 3;

2(*h*) 'land holding tax' means the tax levied and charged under section 5 and the same shall hereinafter be referred to as the tax;

2(*i*) 'prescribed' means prescribed by rules made under this Act;

2(*j*) 'Schedule' means a Schedule appended to this Act; and

(*k*) all other words and expressions used herein and not defined but defined in the Punjab Tenancy Act, 1887, or

the Punjab Land Revenue Act, 1887, shall have the meanings assigned to them in either of these Acts.

*Section* 3. For the purposes of this Act, 'land holding' means the aggregate of all land, in a particular estate, owned by a person or family.

*Section* 5. (1) There shall be levied and charged annually on each land holding, a tax, of various classes of land as specified in Schedule I, at the rates specified in Schedule II:

Provided that no tax shall be levied and charged on land which is liable to special assessment under section 59 of the Punjab Land Revenue Act, 1887, or the Punjab Land Revenue (Special Assessment) Act, 1955.

(2) The rates specified in Schedule II shall continue for a period of thirty years:

Provided that the rates may be reduced up to twenty-five per centum by the State Government, from time to time, by notification.

(3) During the period the tax is levied and charged under sub-section (1), the land shall not be liable to payment of land revenue by way of General Assessment under the Punjab Land Revenue Act, 1887, or the payment of local rate under the Punjab Panchayat Samitis and Zila Parishads Act, 1961.

(4) For the purposes of calculating the tax on a land holding, where it comprises of two or more classes of land, the land of various classes shall be so placed in different slabs, that the land of the highest or the next below class or classes is placed in the first slab, and then the land of the next below class or classes is placed in the second slab and the remaining land in the third slab.

*Section* 6. The tax chargeable under section 5 shall be payable by a landowner in two equal half yearly instalments unless otherwise prescribed for any estate or group of estates.

*Section* 7. (1) The Assessing Authority shall, in the manner prescribed, cause to be prepared, checked and displayed a

list in respect of the tax payable on land holding containing, *inter alia*, the following particulars, namely:—

(a) name of landowner; in case of family, names of landowners;

(b) khasra number of land;

(c) class of land;

(d) area of land;

(e) rate of tax leviable;

(f) amount of tax payable; and

(g) amount of tax payable by a landowner or by each of the landowners, if he is a member of the family.

(2) Any person having any objection in regard to any entry in the list prepared under sub-section (1), may, within a period of fifteen days, file objections to the Assessing Authority.

(3) The Assessing Authority shall dispose of the objections in a summary manner at a prominent place in the estate at a specified date and time to be notified in the manner prescribed. The objector may appear before the Assessing Authority and make oral submission in support of the objections if he so desires.

(4) The list prepared under sub-section (1) shall accordingly be approved or notified and the same shall be announced at the spot.

(5) The amount of tax levied on a land holding, on the basis of the list prepared under sub-section (4), shall not be varied as a result of inheritance, transfer or otherwise till the list is revised on the 1st day of May of the following year.

*Section* 8. (1) Any person aggrieved by an order of the Assessing Authority made under sub-section (4) of section 7 may, within a period of thirty days from the date of such order, prefer an appeal to the Assistant Commissioner in such form and manner as may be prescribed:

Provided that the Assistant Commissioner may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) The Assistant Commissioner may pass such order on appeal as he thinks fit.

(3) Any person aggrieved by an order of the Assistant Commissioner made under sub-section (1) may, within a period of sixty days from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit.

(4) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may, *suo motu*, at any time, call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order and may pass such order in relation thereto as he may deem fit.

Provided that no order shall be passed to the disadvantage of any person unless he has been afforded an opportunity of being heard.

*Section* 9. (1) An authority under this Act may, either of his own motion or on the application of the party interested, review, and on so reviewing, modify, reverse or confirm any order passed by himself or by any of his predecessor in office: ...

Provided as follows:—

(a) When an Assessing Authority or Assistant Commissioner proposes to review any order, whether passed by himself or by any of his predecessor in office, he shall first obtain the sanction of the Assistant Commissioner or Commissioner respectively;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the date of passing of the order;

(c) an order shall not be modified or reversed unless the affected party has been given a reasonable opportunity of being heard; and

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) No appeal shall lie from an order refusing to review any order.

(3) No appeal or application for revision or review made by any person under this Act shall be entertained by the competent authority unless the amount of tax demanded has been paid by such person."

Schedule I to the Act enumerates the various classes of the land in the districts of Haryana and Schedule II prescribes the rates of land holding tax and is as follows:—

SCHEDULE II

Rates of Land Holding Tax

[Section 5(1)]

1. In the case of Class I land specified in Schedule I, comprised in the land holding, at the following rates:

(a) seventy paise per 0.05 hectare for the first one hectare;

(b) one rupee per 0.05 hectare for the next four hectares;

(c) one rupee and thirty-five paise per 0.05 hectare for the remaining land.

2. In the case of Class II land, specified in Schedule I, comprised in the land holding, at the following rates:—

(a) sixty paise per 0.05 hectare for the first one hectare;

(b) ninety paise per 0.05 hectare for the next four hectares;

(c) one rupee and twenty paise per 0.05 hectare for the remaining land.

3. In the case of Class III land, specified in Schedule I, comprised in the land holding, at the following rates:—

(a) forty paise per 0.05 hectare for the first one hectare;

(b) fifty paise per 0.05 hectare for the next four hectares;

(c) sixty paise per 0.05 hectare for the remaining land.

4. In the case of Class IV land, specified in Schedule I, comprised in the land holding at the following rates:—

(a) twenty-five paise per 0.05 hectare for the first one hectare;

(b) forty paise per 0.05 hectare for the next four hectares;

(c) fifty paise per 0.05 hectare for the remaining land.

5. In the case of Class V land, specified in Schedule I, comprised in the land holding at the following rates:—

(a) ten paise per 0.05 hectare for the first one hectare;

(b) fifteen paise per 0.05 hectare for the next four hectares;

(c) twenty paise per 0.05 hectare for the remaining land."

It is also necessary to set out the definitions of 'family' and 'land holding', as originaly enacted in section 2(d) and section 3 of the Act, which were as under:—

"*Section* 2(*d*) 'Family', in relation to a person means his or her spouse and their children who have not completed the age of eighteen years;

Explanation.—A married daughter shall not be treated as a child;

*Section* 3. For the purposes of this Act, 'land holding' means the land owned in a particular estate, by a person if he is the sole member of the family or the aggregate of land owned by all the members of the family."

(5) To achieve the objects of legislation, slab system was introduced in Schedule II to the Act so as to provide the element of progression and the family holding was made the unit holding. Further, in order to collect an increased share of produce of land for

the State from the landowners, the provision was made for aggregating the land owned by all the members of a family in section 3 of the Act as originally enacted. This provision has been attacked as being violative of Article 14 of the Constitution on the ground that a member of a family holding land has been discriminated against *vis-a-vis* an individual owner of land who is not a member of family without there being any difference between the two. It has been submitted that an individual member of the family cannot be burdened with a heavier tax in respect of his land holding as compared to the individual landholders, there being no intelligible differentia for the classification. Since it has been contended by the learned Advocate-General for the respondents that section 3 of the Act, as amended, and now in force, also provides for the aggregation of the land owned by the members of a family, as defined, it is necessary to determine whether such a provision for aggregation could be made.

(6) The learned counsel for the petitioners, in support of their submission, have relied on the judgment of their Lordships of the Supreme Court in *Kunosthat Thathunni Moopil Nair, etc.* v. *State of Kerala and another* (1), wherein the following observations occur in paragraph 7 of the report:—

> "Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13(2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the

(1) A.I.R. 1961 S.C. 552.

Constitution, it must be struck down as unconstitutional.

... ... ... ... ... ...

... ... ... ... ... ...

The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on every one with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the Legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such a classification resulting in unequal burden on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable."

These observations, instead of helping the petitioners, strongly support the case of the respondents. There was no inequality between a family and a family or the provision with regard to

aggregation. The land of all members of a family, as defined in the Act, was to be aggregated and the tax was to be levied on the aggregated holding. There is no comparison between an aggregate of holdings of all the members of a family and the aggregated land held by an individual. Both stand on a different footing and are two distinct classes for the purposes of taxation. The classification made by the Legislature cannot be said to be unreasonable. In my opinion, it is open to the Legislature to prescribe taxable units, the taxing event and the rate of tax and the Court cannot interefere if they are clearly stated and are ascertainable.

(7) Their Lordships of the Supreme Court, in *The Amalgamated Tea Estates Co. Ltd.*, v. *The State of Kerala* (2), laid down the following propositions:—

(1) In order to get the green light from Article 14, the impugned legislation should satisfy the classification test. According to this test (1) the classification should be based on an intelligible differentia and (2) the differentia should bear a rational relation to the purpose of the legislation.

The classification test is, however, not inflexible and doctrinaire. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways. It gives due regard to the complex necessities and intricate problems of government. Thus, as revenue is the first necessity of the State and as taxes are raised for various purposes and by an adjustment of diverse elements, the Court grants the State greater choice of classification in the field of taxation, than in other spheres.

(2) On a challenge to a statute on the ground of Article 14, the Court would generally raise a presumption in favour of its constitutionality. Consequently, one who challenges the statute bears the burden of establishing that the statute is clearly violative of Article 14.

The reason why a statute is presumed to be constitutional is that the Legislature is the best judge of the local

(2) Writ Petitions Nos. 2 & 9 of 1971 decided by Supreme Court on 2nd April, 1974.

conditions and circumstances and special needs of various classes of persons.

The Legislatures alone know the local conditions and circumstances which demanded the enactment of such a law, and it must be remembered that "Legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts".

In that case the contention raised was that the classification of companies into domestic and foreign company under the Kerala Agricultural Income Tax (Amendment) Act, 1970, for the purposes of taxation was not based on any intelligible differentia; and the differentia, if any, had no rational relation to the purpose sought to be achieved by the taxing statute. This contention was repelled.

(8) In *M/s. Murthy Match Works and others* v. *The Asstt. Collector of Central Excise, and another* (3), their Lordships of the Supreme Court enumerated the various factors which have to be considered by the State while imposing a tax and laid down the following propositions:—

(1) One facet of the equal protection clause, upheld by the Indian Courts, is that while similar things must be treated similarly, dissimilar things should not be treated similarly. There can be hostile discrimination while maintaining a facade of equality.

(2) Another proposition which is equally settled is that merely because there is room for classification, it does not follow that legislation without classification is always constitutional. The Court cannot strike down a law because it has not made the classification which commends to the Court as proper. Nor can the legislative power be said to have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made.

(3) It is true that State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is

(3) C.As. Nos. 1752 to 1769 of 1970 decided by Supreme Court on 17th January, 1974.

not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard by which the sufficiency of the differences which form a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of factors which the Court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished.

(4) In this context, the Courts have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis, courts possess the power to pronounce on the constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. The Court cannot compel the legislative and executive wings to classify. Unconstitutionality and not unwisdom of a legislation is the narrow area of judicial review. From the judicial inspection tower the Court may only search for arbitrary and irrational classification and its obverse, namely, capricious uniformity of treatment where a crying dis-similarity exists in reality. A power to classify being extremely broad and based on diverse considerations of executive pregmatism, the judicature cannot rush in where even the Legislature warily treats. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation.

(5) It is well-established that the modern State, in exercising its sovereign power of taxation, has to deal with complex

factors relating to the objects to be cared, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not.

In that case, the classification of match manufacturers was made into power users and manual manufacturers and it was held that it was irrational to castigate this basis as unreal and that having sensitive regard to the obligation of the state to bring the law, including the tax law, into pulsing relationship with life, including the life of the country's economy,there seemed nothing so grossly unfair as to attract the lethal power of the Court to strike down the notification under challenge.

(9) It is pertinent to observe that a wider discretion is allowed to the State in the matter of classification under the power of taxation than under its police power. One reason for this wider discretion, undoubtedly, is the urgent need for revenue by the various Governmental agencies. A State does not have to tax every thing in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonably.

(10) Shri K.P. Bhandari, the learned counsel for some of the petitioners, has strongly relied upon the decision of their Lordships of the Supreme Court in *The State of Andhra Pradesh and another* v. *Nalla Raja Reddy and others*, (4) wherein sections 3 and 4 of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act (22 of 1962) as amended by Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision (Amendment) Act (23 of 1962), were struck down as violative of Article 14 of the Constitution. There is no doubt that a taxing statute can be struck down for being violative of Article 14 of the Constitution but that matter has to be decided with regard to the provisions of each Act. In the Andhra Pradesh Act, the whole scheme of ryotwari settlement was given up so far as the minimum rate was concerned and a flat minimum rate was fixed in the case of dry lands without any reference to the quality or fertility of the soil and in the case of wet lands a minimum wet rate was fixed and it was sought to be justified by correlating it to the ayacut. Further, the whole imposition of assessment was left to the arbitrary discretion of the officers not named in

(4) A.I.R. 1967 S.C. 1458.

the Act without giving any remedy to the assessees for questioning the correctness of any of the important stages in the matter of assessment, such as ayacut, taram, rate or classification or even in regard to the calculation of the figures. Not only the scheme of classification was held to have no reasonable relation to the objects sought to be achieved, viz., fixation and rationalisation of rates, but the arbitrary power of assessment conferred under the Act was held to enable the appropriate officers to make unreasonable discrimination between different persons and lands. On these facts, the Act was held to be violative of Article 14 of the Contitution. These observations cannot be made applicable to the provisions of the Act now under challenge before us. In this Act, the assessing authority has been prescribed, adequate provision for appeal, revision and review has been made and nothing has been left to the arbitrary power of the assessing authorities under the Act which enable them to discriminate between the members of the same class. The decision of the Supreme Court is clearly distinguishable and no help can be derived there from by the petitioners.

(11) The learned counsel for the petitioners have vehemently argued that the definition of 'family' in section 2(d) of the Act, as originally enacted, or as amended, is an artificial one which does not conform to any of the families existing in the State or known to the law. In such a case, discrimination necessarily results from the aggregation of the land owned by the individual members of a family as compared with the individual landholders who are not members of a family. Reliance is placed on the judgments of their Lordships of the Supreme Court in *Karimbil Kurhikoman* v. *State of Kerala* (5) and *A. P. Krishnaswami Naidu* v. *The State of Madras* (6). Those cases related to statutes enacted for the fixation of ceiling on lands and not to taxing statute and the observations made therein cannot be relied upon while interpreting the provisions of a taxing statute. In those cases, the surplus land was to be taken over by the State at a value far below the market value and the Acts were held to be confiscatory. The same cannot be said of the Act under attack before us.

(12) Shri K. P. Bhandari, in support of his argument that the aggregation of the lands owned by the members of a family for the

(5) A.I.R. 1962 S.C. 723.
(6) A.I.R. 1964 S.C. 1515.

purpose of raising increased revenue, is *per se* violative of equality clause in Article 14 of the Constitution and is liable to be struck down, has commended to us the ratio of the decision of the Supreme Court of United States in *Albert A. Hoeper* v. *Tax Commission of Wisconsin and Marathon County, Wisconsin* (7) wherein it was held that—

> "a husband cannot, consistently with the due process and equal protection clauses of the 14th Amendment, be taxed by a state on the combined total of his and his wife's incomes as shown by separate returns, where her income is her separate property and, by reason of the tax being graduated, its amount exceeded the sum of the taxes which would have been due had their separate incomes been separately assessed."

This judgment was noticed by our Supreme Court in *Balaji* v. *Income Tax Officer, Special Investigation Circle, Akola and others* (8) and was distinguished. *Balaji's* case related to the validity of section 16(3) of the Income Tax Act, 1922, which provided that "in computing the total income of any individual for the purpose of assessment, there shall be included (a) so much of the income of a wife or a minor child of such individual as arises directly or indirectly—(i) from the membership of the wife in a firm of which her husband is a partner; (ii) from the admission of the minor to the benefits of partnership in a firm of which such individual is a partner". The constitutional validity of that provision was questioned on the ground that it violated the doctrine of equality before law enshrined in Article 14 of the Constitution and in support thereof strong reliance was placed on the decision in *Albert A. Hoeper's case* (7) (supra). In reference to that case, the Supreme Court observed as under in para 10 of the report:—

> "There, the appellant married a widow. Both the parties had separate incomes and made separate returns. Under the relevant tax Act, the incomes of the wife were added to the income of the husband for the purpose of taxation. The result was to increase the rate of the appellant's income-tax and to charge him with a tax otherwise payable by his wife. It was contended that the said law deprived

(7) 284 U.S. 206-221=(1931) 76 Law. ed. 248:
(8) A.I.R. 1962 S.C. 123.

the tax payer of the due process and equal protection of the law. Roberts, J., who expressed the majority view, accepted the contention and struck out the law. The learned Judge observed at p. 251 thus:

"We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the tax-payer's income cannot be made such by calling it income."

The Court of Appeal in that case assigned two reasons for sustaining the provisions: one was that the provisions under attack were necessary to prevent frauds and evasions of tax by married persons, and the other was that it was a regulation of marriage. The first reason was not accepted by the Supreme Court on the ground that the claimed necessity could not justify the otherwise unconstitutional exaction; and the second reason was rejected for the reason that it could hardly be claimed that a mere difference in social relations so altered the taxable status of one receiving income as to justify a different measure for the tax. Holmes, J., in his dissenting judgment, justified his view on the ground that the statute was the outcome of thousand years of history indicating that husband and wife were one and also for the reason that it had a tendency to prevent tax evasion. 'Prima facie' the majority view supports the contention of learned counsel for the petitioner, but a deeper scrutiny reveals fundamental differences between that decision and the present case. There, there was no question of any partnership between husband and wife, and the income of the wife was added to that of the husband, with the result that he had to pay not only increased rate on his income but also a portion of the tax otherwise payable by his wife; in the present case, the impugned provisions do not impose any such general liability but confine it only to a case where the husband takes his wife in partnership. There is a greater scope for fraudulent evasion by constituting fictitious partnership along with one's wife and minor children

than in a case of separate income of the spouses derived from different sources. That apart, the present social and economic position of women in India as compared with their compeers in America, even as it existed in 1931, is so low that it would be inappropriate to apply the decision made in America to a similar case arising in India. A wife in India, particularly if she be illiterate—a large majority of them are illiterate—would ordinarily be in economic matters a tool in the hands of her husband. Many things are done in her name without her knowledge of the same. When the Legislature of this country, which is assumed to know the conditions of the people and their requirements, with the awareness of this particular widespread fraudulent device in the matter of evasion of taxes, made a law to prevent the said fraud, it is difficult for this Court in the absence of any counter-balancing circumstances to hold, on the analogy drawn from American decisions, that the need for such a law is not in existence. On the contrary, there is a direct decision of the Madras High Court in *B. M. Amina Umma* v. *Income Tax Officer, Kozhikode* (9), sustaining the said provision on the ground of reasonable classification. Rajagopalan, J., speaking for the Division Bench, after considering the relevant decisions on the subject observed at p. 150 of (ITR): (at p. 1126 of AIR) thus:

> 'The reasonableness or otherwise of a classification has to be decided with reference to all the circumstances of the case including the social and economic structure prevalent in the area where the taxing statute is in operation ..... ... ... ... ... ... An attempt to prevent by legislation an evasion of just tax liability and the necessary classification to give effect to that object cannot, in our view, be termed unreasonable.'

With respect we give our full assent to the said observations. We, therefore, reject this contention."

In paragraph 8, it was observed:—

"Under the impugned sub-section, an individual is taxed on the income of his wife or his minor children, if he carries

(9) 1954-26 I.T.R. 137=A.I.R. 1954 Mad.1120.

on business in partnership with his wife or if he admits his minor sons to the benefits of the partnership, whereas an individual, if he carries on business in partnership with a third party, whether a man or a woman, or even with his major children, or if he and his wife or children carry on business separately, will be liable only to pay tax on his share of the partnership income, that is, for the purpose of this sub-section, the former is put in a category different from the latter. It cannot be said that there is no differentia between the two groups; but what is contended is that the said differentia has no rational relation to the object sought to be achieved by the statute in question. It was asked how, from the standpoint of imposition of tax, the difference between an individual and his wife doing business in partnership, and between an individual and his wife doing business separately, and an individual doing business in partnership with his wife and an individual doing business in partnership with a third party, male or female, and between an individual who has admitted his minor children to the partnership business and an individual who is doing business in partnership with his major children or outsiders, would have any reasonable basis. This argument ignores the object of the legislation. We have held that the object of the legislation was to prevent evasion of tax. A similar device would not ordinarily be resorted to by individuals by entering into partnership with persons other than those mentioned in the sub-section, as it would involve a risk of the third-party turning round and asserting his own rights. The Legislature, therefore, selected for the purpose of classification only that group of persons who in fact are used as a cloak to perpetrate fraud on taxation."

In the light of these observations the aggregation of the land of the members of a family consisting of the husband, the wife and their minor children cannot be held to be irrational or unreasonable. It is a matter of general knowledge that the land of the wife and the minor children is generally managed and cultivated by the husband or their father and in view of the impending legislation concerning ceiling on land both in Punjab and Pepsu, the owners of land had made gifts in favour of their wives and children. It can also be said that by aggregation of lands held by all the members of the

family the purpose of one Act to obtain larger revenue from larger holdings will be achieved. If an individual holds a large holding, he shall also be similarly liable to pay higher tax in accordance with the slab system. An individual who is not a member of a family cannot, therefore, be equated with an individual who is a member of the family in view of the various advantages available to the latter. The joint cultivation of large tracts of land is more economical than the separate cultivation of small holdings by individual landowners. Again, it is not the husband who has to pay the higher tax in lieu of the tax payable by his wife and the minor children but the tax has to be paid by the landowners as is provided in sections 6 and 7 of the Act. 'Landowner' is defined in section 3(2) of the Punjab Land Revenue Act, 1887, as under:—

> "3(2) 'landowner' does not include a tenant or an assignee of land revnue, but does include a person to whom a holding has been let in farm, under this Act, for the recovery of an arrear of land revenue or a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate".

and this definition is to apply to 'landowner' as used in the Act by virtue of section 2(k). In simple language, the person in occupation or in the enjoyment of any part of the profits of an estate is the landowner. He may not be the owner of the land, for example, mortgagee with possession or a person to whom the land has been farmed in proceedings for the recovery of land revenue or any amount recoverable as land revenue or in any other capacity except that of a tenant or an assignee of land revenue. The aggregation of the land holding of all the members of a family will only be for the purpose of calculating the tax on that particular land holding and not for charging it from one person unless he happens to be the sole landowner. In other words the taxable unit is determined on the basis of ownership while the tax is to be paid by the landowner, that is, the person in possession of the whole or a part of the land holding or in the enjoyment of the whole or a part of the profits thereof. The burden of the tax does not fall on the owner of the land holding unless he is the landowner also, that is, in possession of the entire holding.

(13) The matter of aggregation of the lands for the purposes of levying tax was considered by their Lordships of the Supreme Court in *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh and another* (10), and it was held to be valid. In that case, the constitutional validity of the provisions of the *U.P.* Large Holdings Tax Act (31 of 1957) was being determined. Section 4 of that Act defined "land-holding" to mean the aggregate of all land held or occupied on the first day of July each year by a landholder, whether in his own name or in the name of any member of his family, and all such land was to be deemed to form part of the land holding of such landholder. The tax on land holding was made payable on a slab system on the basis of annual valuation. No tax was payable if the annual valuation was up to Rs. 3.600 but if it exceeded that limit, the rate was prescribed on a graded scale beginning with 5 nP. in a rupee when the annual valuation was between Rs. 3,600 to Rs. 5,000 and ending with 60 naye paise in a rupee when the annual valuation exceeded Rs. 30,000. In para 16 of the report, it was observed as under:—

> "A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that it is for the Legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also true that the legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects. But, if in its operation, any taxing statute is found to contravene Article 14, it would be open to Courts to strike it down as denying to the citizens the equality before the law guaranteed by Article 14."

In view of the above discussion, there is no merit in the submission of the learned counsel for the petitioners that the provision for aggregating the land holdings of all the members of a family for the purpose of levying tax under the Act is constitutionally invalid.

(10) A.I.R. 1962 S.C. 1563.

(14) It has then to be determined whether the amended section 3 of the Act, as now in force, provides for the aggregation of the land holdings of all the members of a family. It has to be remembered that in the original section 3, provision was made for aggregation of land owned by all the members of a family for the purpose of determining the land holding on which tax was to be levied but it was abandoned when the amendment was made by Ordinance 5 of 1974, which reasonably leads to the conclusion that the abandonment was deliberate. Under the amended Act, land holding means the aggregate of all land owned by a person or a family in a particular estate. It has no reference to the members of the family holding land in their individual names as was the case in the original section 3. The learned Advocate-General, however, submits that if the intention of the Legislature is clear, then the interpretation must be made to conform with that intention and if the language is not clear, words can be supplied by the court to give effect to that intention by way of interpretation. It is stressed that the intention of the Legislature, object of legislation and pith and substance of the main provisions must not be allowed to be thwarted merely because of the faulty language used by the draftsman. Reliance is placed on the rules of interpretation of statutes stated in various judgments.

In *Tirath Singh* v. *Bachittar Singh and others* (11), it was observed in para 7 of the report that—

> "it is a rule of interpretation well-established that, 'where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparant purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

In *The State of Assam and another* v. *Kuseswar Saikia and others* (12), it was pointed out that the reading of Article 233 of the constitution by the High Court was contrary to the grammar and punctuation of the Article. The learned Chief Justice suitably expanded

(11) A.I.R. 1955 S.C. 830.
(12) A.I.R. 1970 S.C. 1616.

that Article in order to interpret it. On the same reasoning it is submitted by the learned Advocate-General that we should expand section 3 so as to substitute the words "husband, wife and their minor children, or any two or more of them" in place of family in section 3. Before doing so, I wish to point out that the concept of family as a land-holding unit was known to the Legislature before the enactment of the Act as it had been used in the Haryana Ceiling on Land Holdings Act, 1972. Under that Act, the primary land-holding unit was prescribed as a family and only those persons, who had no families or were incapable of having families like juristic persons, were treated as individual holders of land. Therefore, it cannot be said that family, as defined in the Act, was unknown to the law or the Legislature before its enactment. Almost the same definition of family was adopted in both the Acts which really formed a series of enactments on the same subject-matter. Under the Haryana Ceiling on Land Holdings Act, the holding of each person or family was defined whereas under the Act tax was levied on that land holding. It is true that while construing the provisions in a particular statute, reference to another statute is not premissible but it is permissible where a series of statutes relating to the same subject-matter are involved. It was held in *Canada Sugar Refining Co.* v. *R.* (13), that—

> "every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter."

This guiding principle was approved by their Lordships of the Supreme Court in *M. Pentiah and others* v. *Muddala Veeramallappa and others* (14). I am, however, not construing the word 'family' in the Act by reference to its definition in the Haryana Ceiling on Land Holdings Act but I am only pointing out that the kind of family dealt with in the Act was known to the law and had been made the unit of land holding in an the earlier Act by the same Legislature. Such a family having been known to the law, it is legitimate to presume that when in section 3 of the Act, as amended, the land holding owned by a family was mentioned, it referred to the land

(13) 1898 A.C. 735.

(14) A.I.R. 1961 S.C. 1107.

holding of the family as such and not the land holding of the individual members constituting it. It is the cardinal principle of interpretation of fiscal statutes that if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the statute seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. It was so held by their Lordships of the Privy Council in *Bank of Chettinad Ltd.* v. *Commissioner of Income-tax, Madras* (15), relying on a judgment of the King's Bench Division in *Inland Revenue Commissioners* v. *Duke of Westminster* (16). This principle of interpretation was approved by their Lordships of the Supreme Court in *A. V. Fernandez* v. *The State of Kerala* (17), in para 29 of the report as under:—

> "It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax Authorities."

It is thus clear that the rule of interpretation commended by the learned Advocate-General cannot be applied when provisions of a taxing statute are to be interpreted. Another well-established rule is that if two interpretations of a taxing statute are possible, one

(15) A.I.R. 1940 P.C. 183.
(16) 1936 A.C. 1.
(17 A.I.R. 1957 S.C. 657.

favouring the subject has to be preferred to the one favouring the State as the State is the author and draftsman of the statute. It was observed in *Commissioner of Income-tax, Punjab* v. *Kulu Valley Transport Co. (P) Ltd.* (18), that—

> "it cannot be overlooked that even if two views are possible, the view which is favourable to the assessee must be accepted while construing the provisions of a taxing statute."

If any word has to be supplied to give meaning to the word 'family' in section 3 of the Act, as amended, a word which will help the interpretation in favour of the subject will be supplied in preference to a word which will help the interpretation in favour of the State. I have, therefore, no hesitation in holding that the land owned by a family means the land held and owned by a family as such collectively and not by its members individually.

(15) Now, I expand this section in accordance with the submission made by the learned Advocate General. The expanded section *qua a* family will read as under:—

> "'Land holding' means the aggregate of all land, in a particular estate, owned by husband, wife and their minor children, or any two or more of them."

In my view, "all land owned by husband, wife and their minor children" will mean all land owned by them all collectively as one unit and not separately by each of them. This meaning gets support from the latter part of this definition, that is, land owned by any two or more of them. This phrase will necessarily mean the joint land held by two or more members of the family and not the separate land owned by any one of those two or more members. The language of the section thus expanded clearly leads to the conclusion that land holding mentioned therein means all land owned by the family as one unit and not the aggregate of all land owned by indivdual members of the family separately.

(16) Reference has then been made by the learned Advocate General to the provisions of sections 6 and 7 which provide that the tax shall be paid by the landowner. It has been urged that under section 7(1) a list in respect of the tax payable on the land holding

(18) A.I.R. 1970 S.C. 1734.

has to be prepared which has to contain the names of all the land-owners in case of a family and the amount of tax payable by each member of the family as is mentioned in clauses (a) and (g) of the said sub-section. I have already pointed out that the tax is payable by the landowner and not by the owner of the land if he is not the landowner. Therefore, if the members of a family are separately in occupation of the land and enjoy the produce thereof, they may be liable individually to pay the tax in respect of the land in their occupation as landowners, but that does not mean that in the case of a family the land of all its members has to be aggregated for the purpose of calculating the taxable unit, that is, land holding owned by a family.

(17) While interpreting section 3, another matter comes to the mind, that is, strictly speaking 'their minor children' after 'husband and wife' in section 2(d) of the Act will mean the children of that particular couple who had given birth to those children and not the minor children from a predeceased wife of a husband or the minor children of the wife from a former husband if he had died and she remarried as a widow or a divorcee. It is a matter of general knowledge that in villages the form of Karewa marriage is prevalent and in a large number of cases a widow gets married to the brother or a near relation of her deceased husband. If the phrase "their minor children" in the definition clause is held to include the minor children of a husband from a predeceased wife, then the minor children of the wife from her previous husband shall also have to be included, in spite of the fact that they may not have come with their mother to the house of their step-father and may have been retained by their grand-parents in their father's family. No provision has also been made with regard to the illegitimate minor children of the husband or the wife, that is, whether they will or will not be included in the family of their putative father or mother, as the case may be. For all these reasons, I am irresistibly led to the conclusion that land holding owned by a family under section 3, as amended, means the land owned by the family as one unit and not by the individual members of that family.

(18) Shri A. S. Nehra, the learned counsel for some of the petitioners has also argued that the proviso to section 5(2) of the Act is arbitrary and does not prescribe any guidelines and should, therefore, be struck down as violative of Article 14 of the Constitution. This proviso only enables the State Government to reduce

the rates up to 25 per cent from time to time by notification and is in favour of the landowners and not the State Government. There is no question of arbitrary use of this power unless the notification making reduction can be challenged on the ground of discrimination and if the challenge succeeds, that notification will be struck down but there is no ground to strike down this proviso. This submission is repelled.

(19) The slab system for imposing higher tax on a graded scale cannot be challenged in view of the decision of their Lordships of the Supreme Court in *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh and another* (10) (supra).

(20) While carefully analysing the provisions of the Act, I find that although provision has been made in section 5 of the Act for the levy and charge of the tax on land holdings in accordance with Schedule II to the Act, no provision has been made as to how such a tax will be apportioned amongst the different landowners that is, whether the tax on each class of land, according to Schedule II, has first to be determined and the aggregate amount so determined has to be distributed amongst the landowners in accordance with the area in the occupation of each or on any other basis. As an illustration, the case of an owner of 7 hectares of Class I land specified in Schedule I to the Act may be taken. On that holding tax has to be levied on the basis of seventy paise per 0.05 hectare for the first one hectare; one rupee per 0.05 hectare for the next four hectares and one rupee and thirty-five paise per 0.05 hectare for the remaining land. The total tax on the holding of 7 hectares will amount to Rs. 148. In case these 7 hectares of land are in occupation of different persons having equal or unequal area, will each one of them be liable to pay the aggregate amount of Rs. 148 proportionately in accordance with the area in his occupation or will he have to pay the tax in respect of the area of the land holding in his occupation on the basis of the rates mentioned in Schedule II to the Act? This is a matter which requires to be clarified so that the landowners and the officers of the Department uniformly interpret the provisions of the Act for the purposes of levy of tax from the landowners.

(21) The validity of no other provision of the Act or any of the rules framed under the Act has been challenged nor has any other point been argued.

(22) For the reasons given above, it is held that the State Government can make the provision for aggregating the lands

owned or held by individual members of the family for the purpose of determining the land holding on which tax is to be levied but section 3 of the Act, as now in force, does not provide for that aggregation. Since no order passed by any authority under the Act has been challenged in this petition, no order for the quashing of any order or proceedings can be passed. Of course, the assessing authorities under the Act will act in acordance with the law as enuniciated above unless amended. The writ petition is decided in the above terms and the parties are left to bear their own costs.

(23) In the other petitions (Civil Writ Petitions Nos. 1737, 2053 to 2055, 2088, 2097, 2102, 2105, 2108, 2116, 2117, 2288, 2507, 2931, 3258, 3298, 3300, 3305, 3306, 3308, 3310, 3315, 3316, 3322, 3324, 3325, 3330, 3332, 3333, 3337, 3339, 3346, 3351, 3355, 3357, 3358, 3360, 3361, 3365, 3369, 3370, 3372, 3375 to 3377, 3379, 3381, 3282, 3286, 3688, 3389, 3392, 3395, 3396, 3403, 3405 to 3408, 3410, 3411, 3413, 3414, 3416, 3419, 3421, 3422, 3425, 3430, 3431, 3433 to 3435, 3438, 3444, 3445, 3456, 3457, 3462, 3464 to 3466, 3473, 3476, 3477, 3483, 3489, 3492, 3494, 3496, 3497, 3500, 3504, 3508, 3509, 3513, 3515, 3517, 3519 to 3525, 3528, 3530, 3531, 3539, 3543, 3544, 3547, 3554 to 3557, 3560, 3562, 3565, 3571, 3573, 3575, 3588, 3592, 3594, 3595, 3597, 3598, 3600, 3603, 3622, 3623, 3628, 3634, 3645, 3655, 3656, 3659, 3661, 3674, 3677, 3681 to 3685, 3691, 3692, 3694, 3696, 3697, 3701, 3703, 3706, 3708, 3730, 3732, 3740, 3741, 3743, 3750, 3769, 3773 and 3877 of 1974) heard along with C.W. 2089 of 1974 also, no specific order of any assessing authority under the Act has been challenged. Only the *vires* of the sections of the Act dealt with above were challenged. These petitions also stand disposed of in the same term as C.W. 2089 of 1974.

K.S.K.

*FULL BENCH*

*Before Bal Raj Tuli, Man Mohan Singh Gujral and D. S. Tewatia, JJ.*

ASHOK KUMAR.,—*Petitioner.*

*versus.*

THE STATE OF HARYANA ETC.,—*Respondents.*

**Civil Writ No. 2535 of 1966**

September 10, 1974.

*Punjab Security of Land Tenures Act* (X of 1953)—*Punjab Security of Land Tenures Rules* (1956)—*Rules* 6(2), 6(3) *and Form 'D'—Appointment of heir by a widow to her husband under custom—Whether divests*