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where out of a number of persons constituting the body of the landlords one landlord reasonably requires the premises for his own use and occupation that should be considered to amount to a requirement on the part of all the landlords. With this view I am in respectful agreement and I accordingly dismiss the present revision petition but leave the parties to bear their own costs and allow the tenant two months from today to vacate the premises.

B.R.T.

CIVIL MISCELLANEOUS

Before Mehar Singh and A. N. Grover, JJ.

RAM PARTAP,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1738 of 1960.

1962

Nov., 5th

Punjab Urban Immovable Property Tax Act (XVII of 1940)—Ss. 3 and 16—Property tax—Whether can be levied on gains and profits derived from the property—Constitution of India (1950)—Article 265—Whether limits taxation on the same property—Punjab Laws (Extension No. 2) Act (VII of 1957)—S. 4—Extension of Act XVII of 1940 to erstwhile Pepsu area—Whether legal—Conferment of powers on Excise and Taxation Officers to recover arrears of property tax as arrears of land revenue—Whether repugnants to the Constitution—Fiscal statute—Public purpose—Whether necessary to be stated in.

Held, that there is nothing in the provisions of Punjab Urban Immovable Property Tax Act and in the charging section 3 to show that the levy of the tax is to be only on the gains and profits derived from the property. It is clearly stated therein that the basis of the levy and charge is the "annual value" of the property and the manner of computing annual value is given in section 5 of the Act. Contractual rent cannot be the basis of such levy or charge.

Held, that Punjab Urban Immovable Property Tax Act is good law in view of Article 265 of Constitution of India and has been continued as an existing law. It has been enacted by the State Legislature within its competence and imposition of tax by it cannot possibly be considered unreasonable and discriminatory or otherwise violative of any of the fundamental rights guaranteed in the Constitution. Merely because different rates of relief for repairs to a building have been provided in this Act and the Income-tax Act does not make this Act invalid or in-operative.

Held, that Article 265 of the Constitution merely says that 'no tax shall be levied or collected except by authority of law', and in this article there is no limitation that tax cannot be charged twice on the same property. In fact and in substance it is one tax on buildings and lands which is divided between the local authority and the State Government, though this is brought about not by one statute but by two separate statutes.

Held, that the Punjab Urban Immovable Property Tax Act has been extended to the former Pepsu State Area by section 4 of the Punjab Laws (Extension No. 2) Act, 1957 (Punjab Act No. 7 of 1957), and this is a statute enacted by the State Legislature within its competence. Therefore, the extension of Punjab Act 17 of 1940 to the former Pepsu area has been made according to law.

Held, that where the assessee is in default, power is given to the officers under section 16 of the Act to recover arrears from the persons liable for the same as if the arrears of property tax due were arrears of land revenue. It is under this power that the authorities under the Act in the case of arrears of property tax proceed to recover the same as arrears of land revenue. When they do so, it is then that the provisions of the Punjab Land Revenue, 1887, come in for application and when the authorities under the Act have been conferred the powers of officers under the Punjab Land Revenue Act, 1887, they act according to law.

Held, that there is nothing in law that in a taxing statute a public purpose has to be stated. No statement of any public purpose in a fiscal statute is necessary.

Case referred by Hon'ble Mr. Justice Grover, to a larger bench on 5th January, 1962, for decision in view of the importance of the question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hin'ble Mr. Justice Mehar Singh and the Hon'ble Mr. Justice Grover, on 5th November, 1962.

Petition under section 226 of the Constitution of India praying that an appropriate writ order or direction be issued quashing the Notification No. 4997 E& T (VI)57/4086, dated 6th January, 1958.

Petitioner in person.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, and A. M. SURI, ADVOCATES, for the Respondents.

ORDER

MEHAR SINGH, J.—This is a petition under article 226 of the Constitution by Ram Partap, petitioner. The facts and circumstances out of which the petition has arisen are as below. Mehar Singh, J.

The petitioner is mortgagee of house No. 1102/2 at Patiala. He avers that his share in the mortgage is half and the other half is with his nephew. The rent settled in the mortgage deed is Rs. 120 per annum. In the days of the former Pepsu State the Patiala Municipality determined the annual rental value of the house at Rs. 324. At that time Patiala was the capital of that State. Now the assessing authority under the Punjab Urban Immovable Property Tax Act, 1940 (Punjab Act No. 17 of 1940), has determined Rs. 486 per annum as the annual value of the house for purposes of that Act.

It appears that on the date of hearing of the case before the assessing authority the petitioner was present, but he avers in paragraph (v) of the petition that the assessing authority told him that his objections will receive due consideration, but

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that no judgment or assessment order was made or announced on that date. Some three months after demand notice and challan form were thrown in his premises one evening at about dusk time to which he gave reply, the copy of which is Annexure 'C'. It appears from this that the date of the demand notice and challan form were shown to him by the Inspector. The main stand taken by the petitioner in this letter was that the tax should be payable by two persons, i.e., by himself and his nephew, and in that way his half share came to Rs. 243, which amount is exempt from payment of the tax, and that the demand notice said that the tax was due for the assessment year 1957-58, but that was against the Act and the rules thereunder because the Act was in force in the Pepsu area with effect from 1st June, 1957. On 18th April, 1958, the Excise and Taxation Commissioner, respondent 2, replied to this letter pointing out that a revision petition be made with proper court-fees stamp and that it should be accompanied by copy of relevant extracts pertaining to the petitioner's property from register 'A' maintained by the assessing authority, Patiala. He also pointed out that a receipt showing payment of the tax assessed should also be attached. The petitioner says that he pointed out that no application of an assessee should be decided in his absence and that this was not attended to. This he did in his letter of 8th May, 1958, copy Annexure 'E'. To this respondent 2 replied by a letter, copy Annexure 'F', saying that no action could be taken on his application and that he should seek his remedy according to law. The petitioner further avers that Punjab Act No. 17 of 1940 became operative in the Patiala rating area from 1st June, 1957 and so tax was only payable by him for the remaining 6 months of the year and not for the entire period of financial year 1957-58. Then he says that after the lapse of 15 months he was summoned to appear before the Excise and Taxation

Officer, respondent 3, when he was placed under arrest and obtained release by payment of the tax. He claims that he was not a defaulter in any sense. He takes the stand that the levy and recovery of property tax for the whole assessment year 1957-58 was illegal, that, in any case, it was incumbent upon the departmental officers to issue a notice in form 'O' under section 14 of the Act, which was not done and the tax was recovered by a coercive process and that three families have been residing in the house. After he had paid tax under the circumstances stated he filed a revision petition to respondent 2 on 25th November, 1959 which was dismissed as time-barred by an order, copy of which is Annexure 'J'. This order he challenges on the grounds that although the revision petition had been filed two years after the assessment, the standing practice of two years' limit was not known to people in Pepsu area and that respondent 2 was biased because of the petitioner's correspondence with him previously. He claims that his application, copy Annexure 'C', was replied to by respondent 2 on 18th April, 1958 as is apparent from Annexure 'D' and so time for filing revision petition should have been reckoned from that date, in which case he filed the revision petition within two years. As against the levy of the property tax, he takes the grounds—

(a) that it should be levied on buildings and lands from which the owners derive gains and profits only,

(b) that it is the basic law of taxation that property or a thing or money once assessed, should not be reassessed,

(c) that the Punjab and Pepsu States merged on 1st November, 1956 and the application of Punjab Act No. 17 of 1940 to the

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Patiala rating area is derogatory to the existing law of the land as also of the provisions of the Constitution,

(d) that the Taxation Inquiry Commission has ruled that property tax, where house tax has already been levied, is illegal, unconstitutional and void, and

(e) that conferment of judicial powers on the Excise and Taxation Officers under the antique Land Revenue Act, 1887, is repugnant to the provisions of the Constitution.

The petitioner in placing his case in his petition obviously has not obtained any legal assistance and he has not stated his case with any clarity. He has not explained in what manner the levy and collection of property tax is really derogatory to the provisions of the Constitution or the realisation of the same as arrears of land revenue is repugnant to the provisions of the Constitution.

Apart from respondents 2 and 3, the Punjab State is respondent 1 and the Excise and Taxation Inspector, Patiala, is respondent 4. Return has been made on behalf of the first three respondents. The position taken by the respondents is that contractual rent between the parties is not to be taken into consideration and the basis of the levy of the property tax is gross annual rent based on reasonable letting value of property from time to time, that the assessing authority announced the decision in the presence of the petitioner, that demand notice and challan form were duly served on the petitioner, against which he filed no appeal within time and he filed the revision after two years, that the current valuation list came into force in the Patiala rating area from 1st October, 1957 and the

petitioner's liability to pay property tax is from 1st October, 1957 to 31st March, 1958 and not for the whole year, that in spite of service of demand notice and challan form for payment of arrears of the tax as due for the year 1957-58, the petitioner failed to make payment and, therefore, proceedings were taken to recover the amount as arrears of land revenue, that the recovery of the tax from the petitioner is lawful and notice in form 'O' under section 14 of the Act is required to be issued to a tenant where the owner of the property fails to pay tax and is untraceable and in this case the petitioner was traceable and liable to pay the tax, that the property has been in the occupation of three families, that petitioner's application on receipt of the demand notice could not be treated as a revision petition, that there is no provision in the Act under which property tax should be levied only on the buildings and lands from which profit is derived, that the property of the petitioner has been assessed to tax only once and the question of reassessment does not arise, that the application of the Act to the Patiala rating area in Pepsu is not in any way derogatory to any existing law or to any provision of the Constitution, that the State Government has not accepted the recommendation of the Taxation Inquiry Commission, and that the exercise of the powers by the Excise and Taxation Officers under the Land Revenue Act, 1887, is legal and valid. It is claimed that property tax has been lawfully levied against the petitioner who failed to pay the same and steps were taken to recover according to law.

I have already pointed out that the petitioner does not seem to have obtained any legal assistance in framing his petition. When the case came before my learned brother, Grover, J., the petitioner seems to have produced very lengthy written arguments,

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of which a copy has been filed at the hearing before us, in which he has attached the constitutional validity and *vires* of Punjab Act No. 17 of 1940. The petition was, therefore, referred to a Division Bench by an order of 5th January, 1962 and that is how this petition comes before this Bench.

The petitioner has personally argued the case and much of his argument has been to read through his written arguments in which a large number of cases have been cited and those cases have been found mostly not to be relevant. It has not been easy to keep him within the bounds of clear and appropriately stated grounds. It appears that before the reference of the case to the Division Bench, a copy of the written arguments by the petitioner was not supplied to the counsel for the respondents. So the learned counsel appearing for the respondents has had difficulty in meeting the case of the petitioner. There could be no reply to all the written arguments of the petitioner in the return of the respondents because they were not aware of the grounds taken in those arguments. During the hearing we made available to the learned counsel for the respondents a copy of the arguments so as to enable him to be in a position to give a reply to the case of the petitioner.

The petitioner, as is clear, did not go in appeal against the assessment order and he filed his revision application so late that it was rejected on the ground of laches. No doubt the order of respondent 2 says that it was rejected as barred by time, which is not a correct statement for it has not been stated that any defined period has been prescribed for filing a revision petition. For a period of two years the petitioner did not move against the order of the assessing authority which order was announced in his presence. Respondent 2 was in

every way justified in dismissing the revision petition on account of such long delay. Not having filed an appeal against the assessment order he of course has not raised the question of the *vires* of the Act before the appellate authority, but in his revision petition he has taken the same grounds as in the present petition.

The first argument of the petitioner is that he is not the owner of the property, but is a mortgagee, but in the definition of the word 'owner' in section 2(c) of the Act a mortgagee with possession is included. So there is no substance in this argument.

The averment of the petitioner that the assessment order was not announced in his presence has been denied and there is no reason to doubt that this statement in the return of the first three respondents is not correct. The petitioner filed no appeal against the order. He filed a revision petition two years after the order which was, as stated, rightly dismissed by respondent 2 on account of laches.

The third stand taken by the petitioner is that he has been charged tax for the whole assessment year 1957-58 whereas he was only liable for six months after the application of the Act to the Patiala rating area, but it is made clear in the return that property tax has not been charged from him for the whole year, but only from 1st October, 1957 to 31st March, 1958, the first date being the date of coming into force of the valuation list. So this is also without basis.

As stated, the petitioner filed no appeal against the assessment order and no proper revision until two years after the date of that order. His correspondence with respondent 2 or 3 was rightly not treated as a revision application. Leaving other

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matters out of consideration, it was not properly stamped with court-fees. His claim that he was not heard is not true, for the order was announced in his presence, and his claim that he should have been heard in relation to every letter sent by him has no meaning.

Section 14 of Punjab Act No. 17 of 1940 has no application to the case of the petitioner, for that concerns recovery of tax from tenants and the petitioner is not a tenant, but a mortgagee of the property. So no notice in form 'O' under that section was necessary to him.

The practice with respondent 2 to entertain a revision petition filed within two years after the assessment is a departmental practice showing considerable latitude in the matter of delay in filing such petitions, but the petitioner took no advantage of that. His claim that the time of two years be counted from the date of his letter of 18th April, 1958 to respondent 2 cannot possibly be accepted on any basis.

In the seventh place come the specific grounds urged in the petition against the levy of the property tax in the case of the petitioner. In this respect one ground is that such tax should be levied on buildings and lands only from which the owner derives gains and profits, but the levy of the tax is under the provisions of Punjab Act No. 17 of 1940 and the charging section is section 3, in which section it is not to be found that the levy is on the gains and profits derived from property, but it is clearly stated that the basis of the levy and charge is the annual value of the property. The petitioner has not been able to indicate how he claims that the levy should be only on the gains and profits derived from the property. This is obviously connected with his claim that in the mortgage deed

the rent stated is Rs. 120 per annum. But contractual rent is not the basis for levy and charge of property tax under the Act, the basis being, as stated, the annual value of the property. The petitioner then says that this expression 'annual value' of the property is vague and is not defined in the Act, but the method of ascertainment of annual value is given in section 5 which says that "The annual rent of any land or building shall be ascertained by estimating the gross annual rent at which such land or building together with its appurtenances and any furniture that may be let for use or enjoyment with such building might reasonably be expected to let from year to year * * * * * * * ", and then follow certain deductions. It is apparent that the contractual rent is not the basis for the charge and levy of property tax, and that is advisedly so, for if what is urged by the petitioner was true, parties could enter into contracts to almost negative the provisions of the Act. In this respect the petitioner has also referred to subsection (1) of section 7 of the Act and says that valuation list remains in force for a period of five years, whereas annual value is to be taken according to the gross annual rent at which the property might reasonably be expected to be let for from year to year and he says that valuation may change almost every year. The Legislature has made a broad approach and provided for the operation of valuation list for a period of five years. This is a practical approach to the problem and the matter could not be left for preparation of valuation list almost every year, a task which would have rendered the working of the Act extremely difficult. So this argument cannot prevail

The second aspect of the argument urged under this head is that there cannot be a case of double taxation. The petitioner says that section 3 provides that "There shall be charged, levied and

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paid an annual tax on buildings and lands", and that section 61(1)(a) of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), also says that any municipal committee may impose 'a tax payable by the owner on buildings and lands * * * * * * *', and, therefore, tax is twice charged 'on buildings and lands', once under Punjab Act 3 of 1911 by a local authority and second time by the State Government under Punjab Act 17 of 1940. This he says is a case of double taxation and this is not permitted by law. However, Article 265 of the Constitution merely says that 'no tax shall be levied or collected except by authority of law', and in this article there is no limitation that tax cannot be charged twice on the same property. In fact and in substance it is one tax on buildings and lands which is divided between the local authority and the State Government, though this is brought about not by one statute, but by two separate statutes. Exactly similar argument was repelled by the learned Judges in *Cantonment Board, Poona* v. *Western India Theatres Limited* (1), with these observations—

> "It is contended, however, that in that case an entertainments duty or tax was already levied by the Bombay Government upon all entertainments given in cinema theatres under the provisions of the Act of 1923; and it would no longer be permissible for the Cantonment Board to levy another entertainments duty because this would be double taxation. But we fail to understand that there is anything in our Constitution which prevents double taxation being levied. It is quite true that if ordinarily a Provincial Legislature wanted to levy for itself

(1) A.I.R. 1954 Bom. 261.

a tax, it would not pass two laws levying two different duties in respect of the same subject-matter, in this case an entertainment. There is nothing to prevent the Provincial Legislature from charging in respect of entertainments as much tax as it likes. It would not, therefore, dream of passing of two Acts levying two separate entertainments duties."

This approach is, therefore, untenable.

The third aspect of this argument is reference to the report of the Taxation Inquiry Commission that levy of both property tax and house tax is illegal, unconstitutional and void, but the recommendations of the Taxation Inquiry Commission have not been accepted by the State Government and, although the petitioner could have relied upon the reasons which prevailed with the Commission for this opinion, he has brought to our notice no such reason for our consideration.

Another aspect of this argument is that the conferment of judicial powers on the Excise and Taxation Officers under the Punjab Land Revenue Act, 1887, is repugnant to the provisions of the Constitution, but it has not been shown how. Where an assessee is in default, power is given to the officers under the Act, section 16, to recover arrears from the persons liable for the same as if the arrears of property tax due were arrears of land revenue. It is under this power that the authorities under the Act in the case of arrears of property tax proceed to recover the same as arrears of land revenue. When they do so, it is then that the provisions of the Punjab Land Revenue Act, 1887, come in for application and when the authorities under the Act have been conferred the powers of officers under the Punjab Land Revenue Act,

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1887, they act according to law. The petitioner has not been able to show how there is constitutional invalidity in this manner of recovery of arrears of property tax. He has dilated in his written arguments upon the fact that when the Punjab Land Revenue Act, 1887, was enacted, the Governor of the Province was all powerful and now the situation has changed. But it is not quite clear how that makes any difference to this particular mode of recovery according to law. So that this approach is without substance as well.

There remains then the last aspect of this argument that the application of Punjab Act No. 17 of 1940 to the former Pepsu area is derogatory to the existing law of the land and the provisions of the Constitution. For the last proposition the petitioner has not been able to urge any argument. But in regard to the first he has urged that after the merger of the Punjab and Pepsu States under the States Reorganisation Act, 1956 (Act No. 37 of 1956), with effect from 1st November, 1956, it is only the President who has been given power of adaptation of laws in the new State of Punjab and that the application of Punjab Act No. 17 of 1940 to the former Pepsu State area has not been done under any adaptation order made by the President. Punjab Act No. 17 of 1940 has, however, been extended to the former Pepsu State area by section 4 of the Punjab Laws (Extension No. 2) Act, 1957 (Punjab Act No. 7 of 1957), and this is a statute enacted by the State Legislature within its competence. Therefore, the extension of Punjab Act 17 of 1940 to the former Pepsu area has been made according to law and this approach is without basis.

There are then for consideration the matters raised by the petitioner in his written arguments. The first argument is that the extension of Punjab

Act 17 of 1940 to the former Pepsu State area is *ultra vires* because of the provisions of the Constitution and subsequent Adaptation of Laws Order, 1950. This matter has already been dealt with in the last paragraph above.

The second argument is that Punjab Act 17 of 1940 has not been enacted for any specific public purpose and connected with this is the argument that initially it was enacted as a war measure and the war having come to an end some time in 1945, this Act has met a natural end. The petitioner takes the position that it is no longer law in force. I think both these aspects are misconceived. The heading and the preamble of the Act do not show that it was a case of a temporary statute made for a defined period and as a war measure. In fact in sub-section (2) of section 3 of the Act the indication is to the contrary, as that sub-section gives power to the State Government to charge and levy a surcharge to the extent stated therein during the period of war and not exceeding twelve months after its termination. This provision rather clearly indicates the intention of the Legislature that the Act was not a war measure but an ordinary piece of legislation to collect revenue. The petitioner has explained during the arguments that no such surcharge was levied as is mentioned in sub-section 2 of section 3 and that this sub-section was only enacted to create wrong impression that the measure in itself was not a war measure. I think this approach has no substance. To support the contention that the Act was only a war measure the petitioner has referred to the debate in the Legislative Assembly. The statement of the objects of the enactment of the Act merely says that the Bill is fiscal, to raise additional revenue. The levy of a tax on urban immovable property which is proposed will tend to a more

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equitable adjustment of the burden of taxation over the whole population of the Province'. The objects do not show that the Act was a war measure and the debates cannot be used as an aid to interpretation. Their Lordships of the Supreme Court in *Jai Lal* v. *The Delhi Administration,* Criminal Appeal No. 69 of 1961, decided on 3rd May, 1962, have made these observations in regard to the manner in and the extent to which objects and reasons or debates can be considered in construing a statute—

> "It is well settled that proceedings of the Legislature cannot be called in aid for constructing a section,—vide *Administrator-General of Bengal* v. *Prem Lal Mullick* (2), *Krishna Ayyangar* v. *Nellaperumal* (3). 'It is clear' observed Lord Wright in *Assam Railway and Trading Co. Ltd.* v. *Inland Revenue Commissioner* (4), 'that the language of a Minister of the Crown in proposing in Parliament a measure which eventually becomes law is inadmissible'. The question whether the statement of objects and reasons is admissible in evidence for construing the statute arose directly for decision in *Aswini Kumar Ghosh* v. *Arbinda Bose* (5), and it was held that it was not.
>
> It was argued that the history of a legislation would be admissible for ascertaining the legislative intent when the question is one of severability. That is so as held by this Court in *R.M.D. Chamarbaugwalla* v. *The Union of India* (6),

(2) 22 I.A. 107 (118).
(3) 47 I.A. 33 (42).
(4) (1935) A.C. 445 (458).
(5) (1953) S.C.R. 1 (28).
(6) (1957) S.C.R. 930.

at pages 951-952. But the statement of objects and reasons is not a part of the history of the legislation. It is merely an expression of what according to the mover of the Bill are the scope and purpose of the legislation. But the question of severability has to be judged on the intention of the legislature as expressed in the Bill as passed, and to ascertain it the statement of the mover of the Bill is no more admissible than a speech made on the floor of the House.

It may be mentioned that there are observations in some of the judgments of this Court that the statement of objects and reasons might be admissible not for construing the Act but for ascertaining the conditions which prevailed when the legislation was enacted. Vide *The State of West Bengal* v. *Subodh Gopal Bose* (7), *M. K. Ranganathan* v. *Government of Madras* (8), *A Thangal Kunju Musaliar* v. *M. Venkitachalam Potti* (9), and *Commissioner of Income-tax, Madhya Pradesh* v. *Sm. Sodra Devi* (10)".

There are no conditions referred to in the objects which help the argument of the petitioner in this respect. This is as far as the argument about the Act having been only a temporary measure during the war is concerned. As regards the other aspect of the argument about it not being for any specified public purpose, there is nothing in law that in a

(7) (1954) S.C.R. 587 (628).
(8) (1955) 2 S.C.R. 374 (385).
(9) 1955 2 S.C.R. 1196 (1237).
(10) A.I.R. 1957 832 (839).

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taxing statute a public purpose has to be stated. When it was enacted there was no such law and now in the Constitution all that is required is what is stated in Article 265 which has been reproduced above. So no statement of any public purpose in a fiscal statute is necessary.

The third argument is in regard to double taxation and to that answer has already been given above.

In the fourth place, the petitioner urges that the impugned Act is invalid and inoperative because of its repugnancy with the Indian Income-tax Act, and the repugnancy pointed out is the different rate of relief provided by either Act for repairs to a building, but the reliefs are provided in each Act in its own scheme and for the purpose of the particular statute and it is not clear how this creates any repugnancy between any provision of the impugned Act and the provisions of the Indian Income-tax Act. In this connection it is further said that Punjab Act No. 17 of 1940 usurps the fundamental rights of a subject after the commencement of the Constitution and it has, therefore, become inoperative and *ultra vires*. The Act is good law in view of Article 265 of the Constitution and has been continued as an existing law. It has been enacted by the State Legislature within its competence and imposition of tax by it cannot possibly under the circumstances be considered unreasonable and discriminatory or otherwise violative of any of the fundamental rights guaranteed in the Constitution.

The next argument has reference to sections 1(2), 2(e), 3(3) and 4(2) of the Act which are described as discriminatory and it is further stated that the Act makes discrimination between urbanites and ruralites. The Act applies to urban

immovable property and in itself creates no discrimination and the State Legislature is justified in legislating separately for a defined and known class of property. So that there is no substance in what is stated to be discrimination between urbanites and ruralities so far as provisions of this Act are concerned. Section 1(2) merely gives power to the State Government to enforce the Act in 'such areas and on such dates' as it may direct. This power is in the nature of conditional legislation and it is not clear how it creates any discrimination. Section 2(e) defines 'rating area' to mean 'any area administered for the time being by a local authority which is included or which may hereafter be included in the schedule to this Act'. Even this creates no discrimination. Section 2(e) defines 'rating area' to mean 'any area administered for the time being by a local authority which is included or which may hereafter be included in the schedule to this Act'. Even this creates no discrimination. Section 3(3) says that 'the State Government may, by notification in the Official Gazette, from time to time, add to, omit or vary any of the entries contained in the schedule to this Act'. This again is legislation in the nature of conditional legislation and such conditional legislation has been held to be valid in *Sadhu Singh* v. *District Board Gurdaspur* (11). Similarly sub-section (2) of section 4 which is in these terms—

> "The State Government may, by notification in the Official Gazette, exempt in whole or in part, from the payment of the tax any person or class of persons or any property or description of property for such period as it may think fit, and may renew such exemption as often as it may consider to be necessary."

(11) 1962 P.L.R. 1.

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is in the nature of conditional legislation and power to exempt does not raise the question of discrimination. Such legislation has also been held valid in the case just cited. In this connection another argument of the petitioner is that power in the provisions just now referred to is abdication of legislative powers, but as explained the power in most of these provisions is in the nature of conditional legislation which is not abdication of legislative powers, and on this ground these provisions are not *ultra vires.*

In the seventh place, it is said that the extension of Punjab Act No. 17 of 1940 to the former Pepsu State area is invalid, and the ground given in the written arguments is the same to which reference has already been made above and it is obvious that there is no force in this argument.

It is then said that no adequate remedy is provided for arbitrary assessment, but this is incorrect for section 10 of the Act provides for appeal against an order of assessment and then for its revision.

In the ninth place, there is repetition of the argument already dealt with that there is no definition of the term 'annual value', but it is clear that section 5 provides comprehensive provision for ascertainment of the same.

It is stated in the written arguments that the definition of the words 'the tax' in section 2(f) of the Act is vague. This provision defines 'the tax' to mean 'the tax (including the surcharge, if any) leviable under the provisions of section 3', and apparently there is absolutely nothing vague about the definition. But the petitioner says that the word 'tax' means a pecuniary burden which is realisable from the pecuniary gains of an individual only, otherwise it amounts to partial confiscation. This is repetition of the argument in this respect that has already been answered.

There is then attack upon section 27 of the Punjab Land Revenue Act, 1887, and that section gives power to the State Government to confer powers under that Act on certain Revenue Officers. It is said that the Revenue Officers exercise judicial powers and there cannot be a case of delegation after the coming into force of the Constitution and this antique Act which was enacted at the time when the Governor had all the power cannot be maintained as valid. There are various provisions in this Act for various aspects of settlement of disputes and in the nature of things a scheme had to be provided and has in fact been provided for the settlement of disputes at various stages. In that scheme a provision had to be made for conferment of powers on various officers for the purposes of the Act and there is nothing invalid in this. The position has in this respect not in the least altered after the coming into force of the Constitution. There is reference by the petitioner to Articles 50, 154 and 162 of the Constitution saying that the same prohibit delegation of powers, but there is no question of delegation of powers under this Act, for it provides for the exercise of power by certain officers under the provisions of the Act for settlement of disputes as stated. There is reference to the question of separation of the executive and the judiciary, but it is not quite clear how this is relevant so far as the present case is concerned.

In the last argument, which is also referred to in the main petition though in a different form, reference is made to *The Corporation of Calcutta* v. *Sm. Padma Debi* (12), in which their Lordships have held that—

> "A combined reading of the provisions of sections 2(10)(b), 3 and 33(a) of the Rent Control Act leaves no room for doubt

(12) A.I.R. 1962 S.C. 151.

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that a contract for a rent at a rate higher than the standard rent is not only not enforceable but also that the landlord would be committing an offence if he collected a rent above the rate of the standard rent. One may legitimately say under those circumstances that a landlord cannot reasonably be expected to let a building for a rent higher than the standard rent. A law of the land with its penal consequences cannot be ignored in ascertaining the reasonable expectations of a landlord in the matter of rent. In this view, the law of the land must necessarily be taken as one of the circumstances obtaining in the open market placing an upper limit on the rate of rent for which a building can reasonably be expected to let".

It is not clear how this helps the petitioner, for it is not his allegation that any standard rent for the property in question has been decided upon by any authority under the Rent Control Act applicable in this State. Apart from this, it is a question which the petitioner should have raised before the assessing authority and thereafter in appeal and revision. This he has not done. So this case is not helpful to the petitioner. The assessing authority, according to the petitioner, has determined the annual value at Rs. 486 per annum. The petitioner says that along with him his nephew is also mortgagee of the house in question. So this annual value when divided between the two leaves his share to be Rs. 243, which he says is exempt from property tax. The assessment order assesses to the property tax not only the petitioner but also his nephew, so the tax is not being levied on the petitioner alone. The petitioner says that his share of the tax is

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Rs. 243 and that that is exempt. There is nothing to show that the property is divided between him and his nephew. All the same even if this position is accepted, the exemption is not available to the petitioner, because according to section 4(1)(c) of the Act buildings and lands with annual value not exceeding Rs. 300 in the Simla rating area and not exceeding Rs. 240 in other areas alone are exempt, whereas in the case of the petitioner the annual value is Rs. 243. Even if his position is accepted, he is liable to pay tax on his half share of the property. So this argument fails.

In the Government of India Act, 1935, Item 42 in List II of the Seventh Schedule related to taxes on lands and buildings. Similar entry is to be found in Item 49 of List II in the Seventh Schedule to the Constitution. In *Ralla Ram* v. *The Province of East Punjab* (13), the constitutional *vires* of Punjab Act 17 of 1940 was challenged on the grounds that property tax under the Act is in fact tax on income and that it, therefore, conflicts with the powers of the Central Legislature to make law in regard to income-tax. These arguments were repelled and Punjab Act 17 of 1940 was held constitutionally valid. The position under the Constitution continues to be the same. The only difference is that the Constitution now guarantees certain fundamental rights, but there is no invasion of any fundamental right by the levy and charge of property tax under this Act, which tax is being levied and charged in accordance with law.

In the result the petition fails and is dismissed, but, in the circumstances of the case, the parties are left to their own costs.

A. N. GROVER, J.—I agree.

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K.S.K.

(13) A.I.R. 1949 F.C. 81.