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March 28

PATEL GORDHANDAS HARGOVINDAS

v.

MUNICIPAL COMMISSIONER, AHMEDABAD

(B. P. SINHA C. J., S. K. DAS, A. K. SARKAR K. N. WANCHOO, and K. C. DAS GUPTA JJ.)

Municipality—Imposition of rate on vacant land—Whether rate to be based on annual value or capital value of land—Whether rules ultra vires*—History of rates in England and India—Government of India Act, 1935 (26 Geo. 5 ch. 2), Seventh Schedule, List I item 55, List II, item 42—Bombay Municipal Boroughs Act, 1925 (Bom. 18 of 1925), ss. 73, 75, Rules 243, 350-A.*

A suit was filed by the appellants to challenge the imposition of a rate by the Municipal Corporation of Ahmedabad on vacant lands situate within the municipal limits. The rate was levied under section 73 of the Bombay Municipal Boroughs Act, 1925, read with Explanation to s. 75 of the Act. The Municipality framed rule 350-A for rating open lands which provides that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital. The contention of the appellants was that reading the two rules together, the rate was levied at a percentage of the capital value of open lands and that the municipality could not do. Rule 350-A read with rule 243 was *ultra vires* ss. 73 and 75 inasmuch as it permitted the fixation of rate at a percentage of capital value and that was not permitted by the Act. The word "rate" used in s.73 had acquired a special meaning by the time the Act came to be passed and meant a tax on the annual value of lands and buildings and not on their capital value. It was also contended that if the Act permitted the levy of a rate on a percentage of capital value of the lands and buildings, that was *ultra vires* the Provincial Legislature. It was further contended that the assessment based on rule 350-A read with rule 243 was *ultra vires* and the assessment list prepared pursuant to the said rule was illegal and void

The trial court held that rule 350-A read with rule 243 was illegal and void and beyond the authority given to municipality under s. 73 of the Act. The trial Court granted the relief claimed by the appellants. The High Court reversed the order

of the trial court and the appellants came to this court after getting a certificate.

Held (Sarkar J., dissenting), that rule 350-A read with rule 243 is *ultra vires* s. 73 of the Bombay Municipal Boroughs Act, 1925, read with Explanation to s. 75. The assessment list for the year 1947-48 published by the municipality for levying the said tax in so for as it was prepared under rule 350-A is illegal, *ultra vires* and void. The municipality was restrained from recovering the said tax on the open lands from the appellants.

The word "rate" had acquired a special meaning in English legislative history and practice and also in Indian legislation where that word was used and it meant a tax for local purposes imposed by local authorities. The basis of the tax was the annual value of the lands or buildings on or in connection with which it was imposed, arrived at in one of the three ways, namely, (1) actual rent fetched by land or building where it is actually let, (2) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings, and (3) where either of these two modes is not available, by valuation based on capital value from which annual value has to be found by applying a suitable percentage which may not be the same for lands and buildings. When in 1925, s. 73 (1) of the Act while specifying taxes which could be imposed by a municipal borough, used the word 'rate' on buildings or lands situate within the municipal borough, the word 'rate' must have been used in that particular meaning which it had acquired in the legislative history and practice both in England and India before that date. The use of the word 'rate' in cl. (i) definitely means that it was that particular kind of tax which in legislative history and practice was known as a 'rate' which the municipality could impose and not any other kind of tax.

That though mathematically it may be possible to arrive at the same figure of the actual tax to be paid as a rate whether based on a capital value or based on annual value, the levying of the rate as a percentage of the capital value would still be illegal for the reason that the law provides that it should be levied on the annual value and not otherwise. By levying it otherwise directly as a percentage of the capital value, the real incidence of the tax is camouflaged and the electorate not knowing the true incidence of the tax may possibly be subjected to such heavy incidence as in some cases may amount to confiscatory taxation.

Per Sarkar J.—Rate is the name given to an impost levied by a local authority to raise funds for its expenses irrespective

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of the basis on which it is levied. There is no authority for the proposition that the word 'rate' has acquired a technical meaning indicating a levy on the basis only of yearly value of property. Such authority is not furnished by the fact that in England in all rating statutes the yearly value has always been adopted as the basis of valuation for calculating rates. The English text books on rating only stated that in England in fact the rating statutes always based on rates on yearly value. In our country, legislatures have used both the words 'tax' and 'rates' to indicate the impost by a local authority and in some cases have permitted a local authority to levy a "property tax" at a percentage of its capital value.

The word 'rate' in s. 73 of the Bombay Municipal Boroughs Act, 1925 which authorises a Municipality to impose a rate on lands cannot be understood in any technical sense. This view is supported by the explanation in cl. (a) of s. 75 of the Act which provides that rules may be made specifying that the rate authorised by s. 73 may be levied on the basis of the capital value of land. There is nothing to indicate that in the explanation the words "capital value" had been used only for the purpose of finding out the annual value from it and not to form by itself the basis of the valuation on which the rate is to be imposed.

Rule 350-A framed under s. 75 of the Act read with r. 253 specifying that the rate on the land shall be levied at one per cent of the capital value of land is not *ultra vires* the Act.

The Act imposes a tax on lands and is within item 42 of List II of the Government of India Act, 1935. The fact that it authorised that tax being quantified on the basis of the capital value of the land subjected to it does not take it out of that item and place it under item 55 of List I dealing with "taxes on capital value of the assets" which only the Central legislature can levy. The identification of the subject-matter of the tax is to be found in the charging section only and the charging section in the present case is s. 73 and the subject-matter which it taxes is land and not the capital value of it. The subject-matter of taxation is something different from the measure provided for quantification of the tax and one has no effect on the other. Nothwithstanding the measure of the tax being based on the capital value, the tax in the present case is nonetheless a tax on land.

State of Madras v. *Gannon Dunkerley & Co.*, [1959] S. C. R. 379, *Provincial Treasurer of Alberta* v. *Kerr*, [1933]

A. C. 710, *R. C. Jall* v. *Union of India*, [1962] Supp. 3 S. C. R. 436 and *Ralla Ram* v. *Province of East Punjab*, [1948] F. C. R. 207, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 253 of 1956.

Appeal from the judgment and decree dated April 6, 1953 of the Bombay High Court in First Appeal No. 223 of 1950.

P. B. Patwari, S. M. Tailor, Atiqur Rehman and *K. L. Hathi*, for appellants Nos. 2, 4, 6, 8—10, 12-14 and 22.

Purshottam Tricumdas, R. M. Shah, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for respondent No. 1.

R. Ganapathy Iyer and *R. H. Dhebar*, for respondent No. 2.

1963. March 28. The Judgments of the Court were delivered by

Wanchoo J.

WANCHOO J.—This appeal on a certificate granted by the Bombay High Court arises out of a suit brought by the appellants to challenge the imposition of a rate by the respondent Municipal Corporation of Ahmedabad on vacant lands situate within the municipal limits. The rate was levied under s. 73 of the Bombay Municipal Boroughs Act, No. XVIII of 1925, (hereinafter referred to as the Act) read with the *explanation* to s. 75 of the Act. The Municipality framed r. 350-A for rating open lands which provides that the rate on the area of open lands shall be levied at 1 per centum on the valuation based upon capital. "Valuation based upon capital" was defined in r. 243 as the capital value of lands and buildings as may be determined from time to time by the valuers of the municipality, who shall take into consideration such reliable data

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as the owners or the occupiers thereof may furnish either of their own accord or on being called upon to do so. The contention of the appellants was that reading the two rules together, the rate was levied at a percentage of the capital value of open lands and this the municipality could not do. Two submissions were made in support of this contention. In the first place it was urged that r. 350-A read with r. 243 was *ultra vires* ss. 73 and 75 inasmuch as it permitted the fixation of rate at a percentage of capital value and this was not permitted by the Act, for the word "rate" used in s. 73 (1) (i) had acquired a special meaning by the time the Act came to be passed and meant a tax on the annual value of lands and buildings and not on their capital value. In the second place, it was urged that if the Act permitted the levy of a rate on a percentage of capital value of the lands and buildings rated thereunder, it was *ultra vires* the Provincial Legislature because of item 55, List I, of the Seventh Schedule to the Government of India Act, 1935. The appellants finally contended that the assessment based on r. 350-A read with r. 243 was *ultra vires* and the assessment list prepared pursuant to the said rule was illegal and void. They therefore prayed that r. 350-A read with r. 243 for assessment of vacant lands as well as the assessment charged on vacant lands under the said rule since April 1, 1947, and the assessment lists for the year 1947-48 which were prepared for that purpose be declared illegal and *ultra vires* and further prayed that an order of permanent injunction might be made against the respondent Municipality restraining it from collecting or causing to be collected from the appellants any sum of money as assessment for vacant lands for the year 1947-48 or for any year thereafter, based on capital valuation on the strength of the said rule.

The suit was resisted by the municipality. Its defence in substance was that the rule was *intra vires*

and the assessment lists had been properly prepared in accordance with the provisions of the Act and were not open to any objection. The trial court held that r. 350-A read with r, 243 was illegal and void and beyond the authority given to the municipality under s, 73 of the Act, inasmuch as it would amount to taxing the open lands as assets of individuals, within the meaning of item 55 of List I of the Seventh Schedule to the Government of India Act. The trial Court therefore decreed the suit and granted the relief as claimed by the appellants.

Then followed an appeal to the High Court which was allowed. The High Court held that the manner in which open lands were rated did not bring the rate within item 55 of List I of the Seventh Schedule to the Government of India Act, as the method employed was only a mode of levying the rate. The High Court therefore held that r. 350-A read with r. 243 was not *ultra vires*. As to the other contention that the rule was *ultra vires* ss. 73 and 75 of the Act, the High Court held that even if it be assumed that by adopting the basis of capital value the municipality must determine the annual value of the property and levy rate on such value, it made no difference to the result, as the municipality might levy much higher rate of tax on the annual value of the property determined on the basis of its capital value. The High Court pointed out that the municipality, by adopting this method, had done in one step what could be done in two steps, and that would have merely involved first determining the capital value and then the annual value, and then fixing the rate on the annual value at a much higher percentage. It was of the view that it was all a matter of fixing a reasonable rate on open land, and if the rate was otherwise reasonable it would be difficult to hold that the rule levying the rate was *ultra vires* ss. 73 and 75. Thereupon the appellants applied for a certificate of fitness to enable

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them to appeal to this Court, which was granted; and that is how the matter has come up before us.

The same two points which were raised in the High court have been urged before us. We shall first consider the point, whether r.350-A read with r.243 is *ultra vires* ss.73 and 75 of the Act. The relevant part of s. 73 is as follows:—

> "(1) Subject to any general or special orders which the State Government may make in this behalf and to the provisions of sections 75 and 76, a municipality may impose for the purposes of this Act any of the following taxes, namely:—
>
> (i) a rate on buildings or lands or both situate within the municipal borough;
>
> ... ..."

Section 75 provides the procedure preliminary to imposing any tax provided under s. 73. The relevant part thereof is as follows:—

> "A Municipality before imposing a tax shall observe the following preliminary procedure:—
>
> (a) it shall, by resolution passed at a general meating, select for the purpose one or other of the taxes specified in section 73 and approve rules prepared for the purposes of clause (j) of section 58 prescribing the tax selected, and in such resolution and in such rules specify.—
>
> (i) ... ...
>
> (ii) ... ...
>
> (iii) in the case of a rate on buildings or lands or both ; the basis, for each class

of the valuation on which such rate is to be imposed ;

... ...

Explanation—In the case of lands the basis of valuation may be either capital or annual letting value."

It will be seen that though s.73 opens with the words "the municipality may impose for the purposes of this Act any of the following taxes", the particular tax specified on lands or buildings is designated as a rate on buildings or lands or both. The use of the word "rate" in cl.(i) of s.73 (1) must be given its due significance and the kind of tax which s.73 (1) (i) empowers the municipality to impose on lands and buildings is a *rate* on lands and buildings. The contention on behalf of the appellants is that the words "rate on buildings or lands" had come to acquire by the time the Act was passed a special meaning and the tax which s. 73 (1) permitted the municipality to impose on lands and buildings was that kind of tax which had come by then to be known as "rate on buildings and lands". It is urged that by the time the Act was passed, the words "rate on lands or buildings" signified a tax not on their capital value but on their annual value and therefore when s. 73 (1) permitted the municipality to impose a rate on buildings or lands or both it only gave it jurisdiction to impose a tax by way of certain percentage on the annual value of lands or buildings and not by way of a percentage on their capital value. Reliance in this connection is placed on the decision of this court in *The State of Madras* v. *Gannon Dunkerly and Co.* (1), where this Court held that "the expression 'sale of goods' was, at the time when the Government of India Act, 1935, was enacted, a term of well-recognised legal import in the general law relating to sale of goods and in the

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legislative practice relating to that topic and must be interpreted in Entry 48 in List II in Sch. VII of the Act as having the same meaning as in the Sale of Goods Act, 1930". It is urged that the legislative practice prevalent in England as well as in India up to 1925 showed that wherever the term "rate" was used in connection with local taxation it meant a tax on the annual value of lands and buildings and not on their capital value. It is therefore necessary to look at the legislative history and practice to find out what the word "rate" meant when the Act was passed in 1925.

The word "rate" has come to our country for the purpose of local taxation from England. It will therefore be useful to find out what exactly the word "rate" when used in connection with local taxation meant in England. The English Rating Law is largely derived from the Poor Relief Act, 1601 (43 Eliz. Cap. 2) which provided for raising "weekly or otherwise, by taxation of every inhabitant, parson, vicar and other and of every occupier of lands, houses, tithes impropriate or propriations of tithes, coal mines or saleable underwoods, in the said parish in such competent sum and sums of money as they shall think fit, a convenient stock of flax, hemp, wool thread, iron and other necessary ware and stuff to set the poor on work". The chief provision of this Act was to levy a tax on the occupier of lands and houses and this tax in course of time came to be known as a rate. In "Rating Valuation Practice" by Benn and Lockwood, the authors observe as follows at p. 1 :—

> "The purpose of rating Valuations is to arrive at a figure termed rateable value on which rates are levied upon the ratepayer at so much in the pound in order to defray the expenses of local government. The present rating law is largely derived from the Poor Relief Act, 1601,

which provided for the levying of taxation on 'every occupier of land, house.....towards the relief of the poor'. Under this enactment occupiers were to contribute to a poor rate according to their means but no specific method of assessment was laid down. The annual value of a person's property within the parish gradually became recognised as the most satisfactory basis and this was first given statutory approval in 1836".

This passage shows that gradually by judicial decisions what was levied on the occupier's lands and buildings under the Poor Relief Act came to be known as a rate on the annual value of the property in beneficial occupation within the parish and this practice was given statutory approval in 1836. The word "rate" thus gradually came to be applied to such local taxation till we find that the Poor Rate Act, 1801 was passed providing for certain appeals and other remedies to persons on whom rates were levied. Then came the Poor Rate Assessment and Collection Act, 1869, which by its first section provided that the occupier of any rateable hereditament shall be entitled to deduct the amount paid by him in respect of any poor rate assessed upon such hereditament from the rent due or accruing due to the owner, and every such payment shall be valid discharge of the rent to the extent of the rate so paid, thus affording relief to the occupier. This history will show that the rate was assessed generally on the occupier of lands and buildings on account of his beneficial occupation of such lands and buildings. The very fact that the rate was assessed on the occupier of lands and buildings leads clearly to the inference that the rate was to be levied on the annual value of the land or building to the occupier and had nothing to do with the capital value of the land and building to the owner. In other words, the rate was to be levied on the annual value of the

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land or building depending upon its letting value and not on the capital value.

In 1869, another Act was passed known as the Valuation (Metropolis) Act, 1869, which applied to the city of London. That Act defined a "ratepayer" as meaning "every person who is liable to any rate or tax in respect of property entered in any valuation list". It also defined "gross value" as meaning "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament". Lastly, it defined the words "rateable value" as meaning "the gross value after deducting therefrom the probable annual average cost of repairs, insurance, and other expenses as aforesaid". Clearly therefore the rate under this Act was a tax leviable on the rateable value, which meant the gross value subject to certain deductions and the gross value was the annual rent which a tenant might reasonably be expected to pay.

Finally, in 1925, came the Rating and Valuation Act, 1925, which was meant to simplify and amend the law with respect to the making and collection of rates by consolidation of rates and otherwise and to promote uniformity in the valuation of property for the purpose of rates. This Act was passed about the same time as the Act with which we are concerned; and it provided for the levy of a general rate and the rateable value of a hereditament was to be the net annual value thereof. In s. 68, the "rate" was defined as a rate the proceeds of which were applicable to local purposes of a public nature and which was leviable on the basis of an assessment in respect of the yearly value of the property. "Ratepayer" was defined to mean every person who was liable to any rate in respect of property entered in any valuation list. "Gross value" was defined to mean the rent at which a hereditament might reasonably be expected to let from year to year, and

"hereditament" meant any lands, tenements, hereditaments or property which were or might become liable to any rate in respect of which the valuation list was made under the Act. Section 22 provided how the rateable value which was the net annual value was to be arrived at from the gross value.

This history of the use of the word "rate" for purposes of local taxation in English Law clearly shows that the word "rate" was used with respect to a tax which was levied on the net annual value or rateable value of lands and buildings and not on their capital value. It would therefore not be wrong to say that in the legislative history and practice in England upto 1925, "rate" for the purpose of local taxation meant a tax on the annual value of lands and buildings liable to such taxation.

In Wharton's Law Lexicon, the word "rate" is defined as a "contribution levied by some public body for a public-purpose, as a poor rate, a highway rate, a sewers rate, upon, as a general rule, the occupiers of property within a parish or other area". This again emphasises the fact that rate was levied not on owners of property but on occupiers, from which it follows that it could only be levied for beneficial occupation, which, in its turn would bring in the annual rental value so far as the occupier was concerned. The Rating and Valuation Act of 1925 to which we have already referred only gave final recognition to this meaning of the word "rate" and consolidated various rates prevailing for various purposes by providing for a general rate for all purposes. This general rate was raised on so much of the pound of the rateable value of each hereditament according to the valuation list.

The methods in use for the purpose of arriving at rateable value were generally three. Where the land or building was actually let, the valuation was

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based on the rent at which it was let. Where, however, the land or building was not let, two methods were evolved for the purpose of finding out the rateable value. The first was to assume a hypothetical tenancy (such as where the same person is the owner and occupier) and find out the rent at which the premises would be let. The second was based on the capital value of the premises. But the tax was not levied on the capital value itself; the capital value was determined on the structural value of the building to be assessed by what was known to be contractor's method or contractor's test in addition to the market value of the land. Sometimes the words "effective capital value" were also used since in some cases the actual capital cost of the building plus the market value of land might for some reason or the other be ineffective *i.e.*, it might not be rent producing. Having arrived at the effective capital value it was necessary to apply percentages thereto in order to arrive at the annual value. In England, the usual percentage in the case where the property was used for commercial purposes, was 5 per centum for the building and 4 per centum for the land. It was after this annual value was arrived at that the rate was imposed on this annual value : (see Complete Valuation Practice by Mustok Eve and Anstey, 5th Edn. pp. 253-258).

Faraday "On Rating" also mentions that "it is the occupier who is rateable in respect of his occupation of rateable property" (p. 1). After referring to the Poor Relief Act, 1601, Faraday says that later legislation had left the occupier as the main bearer of the burden of rate, and the basis of the rate is the beneficial occupation, meaning thereby the occupation of a hereditament for which somebody would be prepared to pay somebody net rent. Faraday also mentions the same three ways of valuing this beneficial occupation for the purpose of arriving at the rateable value or

annual value of lands and buildings, in order to levy the rate : (see Chap. II of Faraday "On Rating".)

The same scheme is to be found in Ryde "On Rating". At p. 7 it is mentioned that the rateable person under the Poor Relief Act 1601 is the occupier and not the owner of the land, though the liability is put in some cases by later Acts on the owner. Ryde further points out that the Poor Relief Act of 1601 did not attempt accurately to define how the value of land was to be measured, and it was for the first time in 1836 that the first statutory definition of "net annual value" was given in the Parochial Assessments Act, 1836, thus giving statutory recognition to the pratice which was being followed till then and this definition was "the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe, commutation rent charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses, if any, necessary to maintain it in a state to command such rent" : (see pp. 242-243). The methods for arriving at the net annual value are given as the same three, namely, (i) the actual rent if the premises were let, (ii) hypothetical tenancy, and (iii) capital cost from which the annual value was determined at a certain percentage : (see Chapters XII and XIV).

That it is the annual value and not the capital value which has always been the basis of the rate upto 1925 is well brought out in the following passage at p. 329 of Ryde "On Rating" :—

> "Where property is of a kind that is rarely let from year to year, recourse, is sometimes had to interest on capital value or on the actual cost, of land and buildings, as a guide to the ascertainment of annual value. There was some

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apparent, if not real, conflict of decisions upon the question whether interest on capital value, or on cost, might be considered at all; but the difficulty disappears if the rule be thus stated : the measure of net annual value is defined by statute as the rent which might reasonably be expected; interest on cost, or on capital value, cannot be substituted for the statutory measure, but in the absence of the best evidence, that is, actual rents, it can be looked at as *prima facie* evidence in order to answer the question of fact what rent a tenant may reasonably be expected to pay".

It will thus be clear from the various statutes to which we have referred and the various books on rating in England that the rate always had the meaning of a tax on the annual value or rateable value of lands or buildings and this annual value or rateable value is arrived at by one of three modes, namely, (i) actual rent fetched by land or building where it is actually let, (ii) where it is not let, rent based on hypothetical tenancy, particularly in the case of buildings, and (iii) where either of these two modes is not available, by valuation based on capital value from which annual value has to be found by applying a suitable percentage which may not be the same for lands and buildings, and it was this position which was finally brought out in bold relief by the Rating and Valuation Act, 1925. It is clear further that it is not the Rating and Valuation Act of 1925 which for the first time applied the concept of net annual value and rateable value as the basis for levying a rate for purposes of local taxation; that basis was always there for centuries before the Act of 1925 was passed.

The present position is summed up in Halsbury's Laws of England, Third Edition (Vol. 32),

paras 9 and 10. Paragraph 9 deals with the liability to the rate in general and is in these terms :—

> "The general rate is leviable by taxation of every parson and vicar, and of every occupier of lands, houses, tithes, impropriate, propriations of tithes, coal mines, mines of every other kind, woodlands, sporting rights, and advertising rights. In certain cases the owner of property is rated in place of the occupier; and in a few instances, owners as such are rateable ...."

Paragraph 10 deals with the meaning and nature of rate in these terms :—

> "The expression 'rate' means a rate the proceeds of which are applicable to local purposes of a public nature and which is leviable on the basis of an assessment in respect of the yearly value of the property".

This meaning of the word "rate" in England is, as we have shown above, not merely based on the Rating and Valuation Act, 1925; it is borne out to be so by English legislative history and practice even before the Rating and Valuation Act of 1925, was passed. Therefore, it cannot be doubted that in England from where in this country we have borrowed the word "rate", that word had acquired a special meaning namely that it was a tax on the annual value of lands and buildings found in one of the three modes we have already indicated.

It is also pertinent to note that Land Tax as such was a different tax altogether in England and was levied for the first time by the Land Tax Act of 1797. Land tax is a charge on land, and not on the income likely to arise from occupation of land and the intention was that it should be borne by the owner of the land. The existence of this tax as

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distinct from the rate on lands and buildings brings out what the word "rate" has always meant in local taxation in England as indicated above : (see p. 332 of Benn and Lockwood on Rating Valuation Practice, Fifth Edition).

Let us now look at the legislative history and practice in India upto 1925. The Bombay City Municipal Act (No. III of 1888), by s. 139 provided for property tax. Section 154 (1) thereof provided for valuation of property assessable to property taxes in these terms :—

> "In order to fix the rateable value of any building or land assessable to a property tax, there shall be deducted from the amount of the annual rent for which such land or building might reasonably be expected to let from year to year, a sum equal to ten per centum of the said annual rent, and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever".

It may however be noted that this Act did not use the word "rate", though it has used the words "rateable value" in s. 154.

The Bengal District Municipalities Act(No. III of 1884) provides by s. 85 for a rate on the annual value of holdings situate within the municipalities, and the word "holding" is defined in this Act as "land held under one title or agreement". By its very definition the rate is on the annual value in this Act.

The Madras District Municipalities Act (No. IV of 1884) provides for a tax on lands and buildings, and further provides that the tax shall be on the annual value of the buildings or lands or both. This Act does not use the word "rate" but what in

actual fact it provides for is a rate based on the annual value of lands and buildings.

The Calcutta Municipal Act, (No.III of 1899) specifically uses the word "rate" and provides for imposition of rates on all buildings and lands by s. 147. Section 151 provides for valuation of buildings and lands for the purposes of rate, and it is the annual value of lands and buildings which is the basis of the rate, and that annual value is deemed to be the gross annual rent at which the land might reasonably be expected to let from year to year (subject to certain deductions).

In North-Western Provinces and Oudh Municipalities Act (No. 1 of 1900), s. 59 provides for a tax on houses, buildings and lands situate within the municipality, and the tax is based on their annual value. Here the word "rate" is not used but the tax is nothing other than a rate, for it is on the annual value of lands and buildings.

Section 59 of the Bombay District Municipalities Act (No. III of 1901), provides for the imposition of a rate on buildings or lands or both situate within the municipal district. The words in this Act are exactly the same as in the Act under our consideration. Section 63 provides for the preparation of assessment lists and cl. (d) thereof lays down the annual letting value or other valuation on which the property is assessed.

In the Central Provinces Municipalities Act (No. XVI of 1903), s. 35 provides for a tax on houses, buildings and lands, and the tax is not to exceed 7 per centum of the gross annual letting value of the house, building or land. Here again the word "rate" is not used although the tax is no more than a rate.

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The Madras Municipal Act (No. III of 1904) by s. 129 provides for the levy of tax on buildings and lands. It has not used the word "rate" but the levy is on the annual value of buildings and lands and the annual value by s. 130 is deemed to be the gross annual rent at which the lands might reasonably be expected to let from year to year or from month to month (subject to certain deductions). It is remarkable how the words used in the various Indian Acts are almost the same as in English statutes and how they follow the English definitions of gross value or annual value almost word for word. Though, therefore, the word "rate" was not used in this Act, the levy was on the annual value of the land.

Lastly, the Punjab Municipalities Act, (No. III of 1911) provides for a tax on buildings and lands and it further provides various modes for assessment one of which is based on the annual letting value. Two other ways are provided in this Act, namely, so much per square yard of the ground area and so much per foot of frontage on streets and bazars. But that also does not change the nature of the tax which is not based on capital value.

It will thus be seen that all Indian statutes till 1911 dealing with municipal taxation impose a tax on the annual value of lands or buildings without always using the word "rate." In some of the statutes the word "rate" is used but the tax is again on the annual value. The legislation on this subject has been summed up by Aiyangar in "Municipal Corporations in British India," (Vol. III, 1914 Edn.) at p. 153 in these words :—

> "All municipal corporations in British India are empowered to levy taxes on all buildings and lands within their local limits subject to certain specific exemptions. The owners are made primarily liable in some municipalities,

while in others both the owners and occupiers are made liable. Taxes which they can levy form a fixed percentage on the rateable or annual values of all the said buildings and lands. The percentage varies in the different municipalities and the mode of ascertaining the rateable or annual value also varies."

Turning now to the Acts passed in India between 1912 and 1925, we find the same state of affairs. The U. P. Municipalities Act, (No. II of 1916) provides for a tax on the annual value of buildings or lands or of both by s. 128 (1) (i).

The Madras City Municipal Act, (No. IV of 1919) imposes a property tax by s. 98. This tax is to be levied, under s. 99 on all lands and buildings within the city at such percentages of the annual value of buildings and lands as may be fixed by the council, subject to a maximum and minimum, the maximum being 20%.

The Madras District Municipalities Act, (No. V of 1920) imposes a property tax by s. 81 (1); it is to be levied, by its sub-s. (2), at such percentages of the annual value of buildings or lands as may be fixed by the municipal council.

The C. P. and Berar Municipalities Act, (No. II of 1922) provides for a tax payable by the owners of lands and buildings situate within the limits of the municipality, with reference to the gross annual letting value of the buildings or lands.

The Bihar and Orissa Municipal Act, (No. VII of 1922) provides by s. 82 (1) (a) for a tax upon persons in sole or joint occupation of holdings within the municipality. Further by cl. (b), (c), (d) and (e) of this section, provision is made for a tax on all holdings, a water tax, a lighting tax, and a latrine

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tax on the annual value of holdings. The other sections prescribe the maximum beyond which the taxes will not be levied. As the tax under s. 82 (1) (a) is on occupation it necessarily follows that it could only be levied on the annual value.

It will thus be seen that these Acts which were passed between 1912 and 1925, which repeal the earlier Acts also provide for taxation on lands and buildings, and though the word "rate" is not used in any of these Acts, the tax is still on the annual value of lands and buildings. This shows that there was a uniform legislative history and practice in India also though sometimes the impost was called a tax on lands and buildings and at others a rate. But it was always a tax on the annual value of lands and buildings. In any case wherever it was called a rate it was always on the annual value. It would therefore be not improper to infer that whenever the word "rate" is used with respect to local taxation it means a tax on the annual value of lands and buildings.

It will be clear further that in India up to the time the Act with which we are concerned was passed the word "rate" had acquired the same meaning which it undoubtedly had in English legislative history and practice up to the year 1925, when the Rating and Valuation Act came to be passed consolidating the various rates prevalent in England. It would therefore be right to say that the word "rate" had acquired a special meaning in English legislative history and practice and also in Indian legislation where that word was used and it meant a tax for local purposes imposed by local authorities, and the basis of the tax was the annual value of the lands or buildings on or in connection with which it was imposed, arrived at in one of the three ways which we have already indicated. It seems to us therefore that when in 1925 s. 73 (1) of the Act while specifying taxes which

could be imposed by a municipal borough used the word "rate" on buildings or lands situate within the municipal borough, the word "rate" must have been used in that particular meaning which it had acquired in the legislative history and practice both in England and India before that date. The matter might have been different if the words in cl.(i) of that section were "a tax on buildings or lands or both situate within the municipal borough", for then the word "tax" would have a wide meaning and would not be confined to any special meaning. But the use of the word "rate" in cl. (i) definitely means that it was that particular kind of tax which in legislative history and practice was known as a "rate" which the municipality could impose and not any other kind of tax. It is true that in the opening words of s. 73 (1) it is said that the municipality may impose any of the following taxes, which are thereafter specified in cls. (i) to (xiv). But when cl. (i) specifies the nature of the tax as a rate on buildings or lands or both we must find out what the word "rate" used therein means, for it could not be an accident that the word "rate" was used in that clause when dealing with a tax on lands or buildings. Further if we find that the word "rate" had acquired a special meaning in legislative history and practice in England and India before 1925 with reference to local taxation, it must follow that when the word "rate" was used in cl. (i) instead of the general word "tax" it was that particular kind of tax which was known in legislative history and practice as a rate which the municipalities were being empowered to impose. It may be added herewith some advantage that the word "tax" in the opening words of s. 73(1) has been used in a general and all-pervasive sense as defined in s. 3(20) of the Act and not in any restricted sense; and therefore when the word "rate" is used in cl.(i) it was clearly used not only in the specific and limited sense, but also with the intention, to convey the meaning that it had acquired by the time the

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Act was passed. It is remarkable that in some other clauses of s. 73(1) also the general word "tax" has not been used, though of course all the imposts in cls. (i) to (xiv) are called taxes in the opening words of s. 73(1) for obvious reason. In cl. (iii) the words used are "a toll on vehicles" which obviously mean that only that kind of tax which was known as toll which could be imposed on vehicles. In cl. (iv) the word used is "octroi" on animals or goods, implying thereby that kind of tax which was known as octroi could be imposed and not any kind of tax within the meaning of the general word "tax". Similarly in cl. (v) the words used are "a terminal tax on goods" meaning thereby that kind of tax which was known as terminal tax could be imposed. Therefore when the first clause of s. 73 (1) gives power to the municipality to impose a rate on buildings or lands it meant that kind of tax which had acquired a special meaning and was known as rate in the legislative history and practice of England as well as of India upto then. That legislative history and practice we have considered and it shows that the word "rate" whenever used upto 1925 with reference to local taxation meant a tax on the annual value of lands and buildings and not a tax on the capital value.

It has however been urged that by virtue of the *explanation* to s. 75, it is open to the municipality in the case of lands to use two bases of valuation, namely, either capital or annual letting value. That is undoubtedly so. But it does not mean that because the municipality is empowered to use capital as one basis of valuation it has been empowered when fixing a rate to fix it as so much percentage of the capital value. That *explanation* carries in our opinion only the meaning which is in accordance with the practice in England and also in this country and it seems to us that it is that meaning which should be given when the basis of valuation is capital.

We have already pointed out that in England also one basis of valuation for the purpose of a rate was to find out first the capital value or the effective capital value. Then a certain percentage of the effective capital value was taken as the annual value and the tax was levied on the annual value so arrived at. In such a case though the tax was levied on the annual value the basis of valuation would still be capital. Therefore the fact that the *explanation* used the words "the basis of valuation may be capital" it does not mean that the tax would be at such and such perecentage of the capital; it only means that in order to arrive at the annual value for purposes of levying a rate which is a tax on the annual value, the municipality may use the capital value and then a percentage thereon to arrive at the annual value. This would be in accordance with the third way of arriving at annual value to which we have referred earlier. Therefore we are of opinion taking into account the fact that the word "rate" has been used in the first clause to s. 73(1), the *explanation* when it says that in the case of lands basis of valuation may be capital, only means that that method of valuation which was in vogue in England and which we have described as the third method of valuation may be used to arrive at the annual value from the capital value and the rate may then be determined as a tax on the annual value. In this view of the matter r. 350-A read with r. 243 by which the municipality has fixed the tax on the basis of capital value directly is against the provisions of s. 73 (1) (i) and the *explanation* to s. 75. The whole difficulty in this case has arisen because unfortunately the words "rate" or "rateable value" have not been defined anywhere in the Act, though they have been defined in some other contemporaneous statutes in force at the time the Act was passed and to which we have already referred.

Our attention was drawn in this connection to an amendment made in the Madras District

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Municipalities Act, (No. V of 1920), by the insertion of sub-s. (3) in s. 81 of that Act. This was done in 1930 and provided that "in case of lands which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings" the property tax may be levied at such percentages of the capital value of such lands or at such rates with reference to the extent of such lands as may be fixed. This amendment was a sort of exception to s. 81 (2), which provided generally for levying these taxes at such percentages of the annual value of lands and buildings as may be fixed by the municipal council. In the first place this amendment made in 1930 cannot affect the legislative history and practice, as it was upto 1925 when the Act with which we are concerned was passed. Besides this was an express provision providing in so many words for levying property tax at a percentage of the capital value in the case of certain exceptional lands. The amendment was made in 1930 before the Government of India Act, 1935, had come into force with its separate legislative lists and there could be no question then of the competence of the provincial legislature to make such an amendment. In any case this exceptional provision made after 1925 in express words cannot detract from the meaning of the word "rate" particularly when the Act has not used the word "rate" anywhere. Further the provision in the Act with which we are concerned is not in express terms. All that the *explanation* provides is that in case of open lands, the basis of valuation may either be capital or annual letting value. Valuation based on capital was well-known in England with respect to the levy of rates as it was the third method to which we have referred. Therefore when the *explanation* uses these words it must in our opinion be held to refer to that well known method of valuation prevailing in England with respect to levy of rates and cannot be read to mean a percentage of the capital value

itself. At any rate there are no express words in the *explanation* to that effect and therefore it should be read to mean the third method of valuation in force in England to which we have already referred. The amendment therefore made in 1930 in the Madras Act does not in any way affect the legislative history and practice relating to the word "rate" which, as we have pointed out, was not even used in that Act. We may add that we express no opinion as to the validity of this amendment after the Government of India Act, 1935 and the Constitution of India have come into force.

It is however urged that it really makes no difference whether the rate is levied at a percentage of the capital value or is a percentage of the annual value arrived at on the basis of capital value by fixing a certain percentage of the capital value as the yield for the year. It is true that mathematically it is possible to arrive at the same figure for the rate by either of these methods. Suppose that the capital value is Rs. 100/- and, as in this case, the rate is fixed at 1 per centum of the capital value, it would work out to Re. 1/-. The same figure can be arrived at by the other method. Assume that 4 per cent is the annual yield and thus the annual value of the piece of land, the capital value of which is Rs. 100/-, will be Rs. 4/-. A rate levied at 25 per cent will give the same figure, namely, Re. 1/-. Mathematically, therefore it may be possible to arrive at the same amount of rate payable by an occupant of land, whether the rate is fixed at a particular percentage of the capital value or a particular percentage of the annual value. But this identity would not in our opinion make any difference to the invalidity of the method of fixing the rate on the capital value directly. If the law enjoins that the rate should be fixed on the annual value of lands and buildings, the municipality cannot fix it on the capital value, and then justify it

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on the ground that the same result could be arrived at by fixing a higher percentage as the rate in case it was fixed in the right way on the annual value. Further by fixing the rate as a percentage of the capital value directly, the real incidence of the levy is camouflaged. In the example which we have given above, the incidence appears as if it is only 1 percent but in actual fact the incidence is 25 percent of the annual value. Further if it is open to the municipality to fix the rate directly on the capital value at 1 percent it will be equally open to it to fix it, say at 10 percent, which would, taking again the same example, mean that the rate would be 250 percent of the annual value and this clearly brings out the camouflage. Now a rate as 10 percent of the capital value, may not appear extortionate but a rate at 250 percent of the annual value would be impossible to sustain and might even be considered as confiscatory taxation. This shows the vice in the camouflage that results from imposing the rate at a percentage of the capital value and not at a percentage of the annual value as it should be. Lastly, municipal corporations are elected bodies and their members are answerable to their electorates. In such a case it is necessary that the incidence of the tax should be truly known. Taking the example which we have given above, the municipal councillors may not feel hesitant in imposing a rate at 1 percent of the capital value, but if they were to impose it at 25% of the annual value they may hesitate to do so, because they have to face the electorates also. We are therefore of opinion that though mathematically it may be possible to arrive at the same figure of the actual tax to be paid as a rate whether based on capital value or based on annual value, the levying of the rate as a percentage of capital value would still be illegal for the reason that the law provides that it should be levied on the annual value and not otherwise. By levying it otherwise directly at a percentage of the capital

value, the real incidence of the rate is camouflaged, and the electorate not knowing the true incidence of the tax may possibly be subjected to such a heavy incidence as in some cases may amount to confiscatory taxation. We are therefore of opinion that fixing of the rate at a percentage of the capital value is not permitted by the Act and therefore r. 350-A read with r. 243 which permits this must be struck down, even though mathematically it may be possible to arrive at the same actual tax by varying percentages in the case of capital value and in the case of annual value. It follows therefore that as the tax in the present case is levied directly as a percentage of the capital value it is *ultra vires* the Act and the assessment based in this manner must be struck down as *ultra vires* the Act.

In the view that we have taken of the meaning of the word "rate" with the result that r. 350-A read with r.243 has to be struck down as *ultra vires* the Act, it is not necessary to consider the second question raised before us, namely, whether the explanation would be *ultra vires* the Provincial Legislature because of item 55, List I, of the Seventh Schedule to the Government of India Act, 1935, if it authorises the municipality to levy the rate at a percentage of the capital value. We have already said that that is not the meaning of the words used in the *explanation* and the second point therefore does not fall to be considered.

We therefore allow the appeal and set aside the order of the High Court and declare that r. 350-A read with r. 243 is *ultra vires* s. 73 of the Act read with the *explanation* to s. 75. It is further declared that the assessment list for the year 1947-48, published on January 25, 1948, by the municipality for levying the said tax in so far as it is prepared under r. 350A is illegal, *ultra vires* and void. The respondent municipality is therefore restrained from

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recovering from the plaintiffs, appellants the said tax on the open lands assessed in the said assessment list for that year and later years. The appeal is hereby allowed with costs throughout in favour of the plaintiffs-appellants.

SARKAR J.--The appellants are holders of vacant lands within the limits of the respondent Corporation. The Corporation framed a rule providing that the rate payable on open lands would be on the basis of their capital value. The question at issue is whether this rule is void.

The Corporation was formed under the Bombay Municipal Boroughs Act, 1925, to two of the provisions of which only it is necessary to refer for the purpose of this appeal. The first is s. 73 which provides that, "a municipality may impose for the purposes of this Act any of the following taxes, namely :—'(i) a rate on buildings or lands or both situate within the municipal borough.' The other is s. 75 which states: "A municipality before imposing a tax shall observe the following preliminary procedure :—(a) it shall, by resolution .....select..... one or other of the taxes specified in s. 73 and approve rules.....prescribing the tax selected and in such resolution and in such rules specify :—.....(iii) in the case of a rate on buildings or lands or both, the basis, for each class of the valuation on which such rate is to be imposed ;.....
.....
Explanation—In the case of lands the basis of valuation may be either capital or annual letting value." It is under this section that the rule in question was framed. That rule so far as material is in these terms :

Rule 350 A.—".....the rate on open land shall be levied as under :—

(I) .....

(II) Rate on.....open land...shall be levied at 1% of the valuation based on capital.....".

Rule 253 provides that "Valuation based upon capital shall be the Capital value of buildings and lands as may be determined from time to time by the valuers of the Municipality."

There is no doubt that as a result of these sections and rules, the appellants were being made to pay 1% of the capital value of their lands as assessed by Corporation's valuers. The appellant's had some objection to the valuation on its merits but it is conceded that these cannot be raised in the present proceedings. Learned counsel for the appellants has, therefore, confined himself entirely to challenging the Corporation's power to impose the levy on the basis of the capital value of the lands.

The challenge has been based on two grounds, none of which, to my mind, is sustainable. It is first said that the Corporation's power to levy a tax on lands is confined by s. 73 to that variety of tax which is called a "rate" and a "rate" is an impost which is leviable on the basis of an assessment in respect of the yearly value of property. Hence, it is contended, the Corporation had no power to levy any tax based on the capital value of the lands and its rules giving authority to do so are, therefore, void.

The foundation on which this contention rests is that the expression "rate" has a technical meaning namely, a levy on the basis of yearly value of property. Support for this contention is sought from various well known English text books on "Rating." I doubt very much if these authorities meant to say that a "rate" must be based on yearly value; I think they stated, "rates" are in fact based on yearly values. The two are not, in my view, the same. Furthermore,

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in England the law of rating has always been statutory : see Hulsbury's Laws of England (3rd ed.) vol. 32 p. 3. It would follows that all that these text books could say was that in all the successive rating statutes the basis of yearly values has always been adopted. I am unable to agree that it follows from this that the expression rate can be said to have acquired a technical meaning as referring only to an impost based on annual value.

Reference was made at the Bar to the *State of Madras* v. *Gannon Dunkerley and Co. Ltd.* (1). In that case it was held that in deciding the scope of an entry in a legislative list in the Government of India Act, 1935 reference might legitimately be made to legislative practice and to the well-recognised legal imports of terms used in that entry. It seems to me that the problem here is different. We have to decide what the plain English meaning of the word 'rate' is and not the scope of legislative power.

Now, as to the plain meaning, the Shorter Oxford Dictionary defines 'rate' as 'amount of assessment on property for local purposes.' So in Halsbury's Laws of England (3rd ed.) vol. 32 p. 3 it has been said that "Rates are principal means by which money to defray local government expenses is raised by direct levy on occupiers, or in certain cases owners, of property within the area of the authority making the rate." Rate, therefore, is an expression used to indicate an impost levied by a local authority to raise funds for its expenses. Such an impost would be rate irrespective of the basis on which it is levied. Of course, the authority cannot levy a rate, or indeed any impost, unless a statute gives it the power to do so and the manner in which it can levy that impost must also be decided by statute. Rate is only the name given to an impost and there is nothing inherent in its nature to indicate that the impost must be assessed in a certain way. I find nothing in the

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

authorities to support the view that in England rate must always be levied on the basis of annual value and an impost not so levied, would not be rate at all.

So far as our country is concerned, the foundation for the argument is much weaker. We have a large number of statutes in which an impost by a local authority though based on annual value has been called "tax"; see for examples –The Bombay City Municipal Act (Act No. III of 1888), The Madras District Municipalities Act (Act No. IV of 1884). The North-Western Provinces and Oudh Municipalities Act, (Act No. 1 of 1900) and The Central Provinces Municipalities Act (Act XVI of 1903). Our practice has, therefore, departed from the English practice at least to this extent that we do not always call imposts levied for local government or municipal expenses, "rates". Also according to our legislative practice, even a "tax" may be based on annual value ; an assessment on the basis of an annual value need not necessarily be called a "rate". It cannot, therefore, be said that in our country the world "rate" has acquired any technical meaning as indicating only an impost by a local authority assessed on the basis of annual value of property. Our legislatures have discribed the impost indifferently both as "tax" and as "rate" as it suited them and have in each case provided for the method of its assessment. In fact s. 81 (3) of the Madras District Municipalities Act, 1920 permits a municipality to levy "property tax" on certain lands "at such percentages of the capital value of such lands.....as it may fix".

I also do not think that the argument had been presented to the High Court in this form. We have, therefore, not the advantage of the views of the High Court as to whether the expression "rate" has acquired a technical meaning. Neither do I think that much material had been placed before us by counsel for the appellants in this connection. All this makes

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it necessary for us to be fully satisfied about the suggested technical meaning of the term "rate" before we pronounce in its favour, and speaking for myself, I confess I am very far from being so satisfied.

There is yet another difficulty in the appellant's way. No doubt s. 73 uses the word "rate", but it is clear that the rate is a kind of tax for the section says so. Section 75 gives the municipality the power to frame rules specifying the basis of the valuation on which a rate on lands is to be imposed. The explanation to this section puts it beyond doubt that the municipality may in the case of lands specify at its pleasure as the basis either the capital value or the annual letting-value. The Act, therefore, contemplates a rate which can be based on capital value. Quite plainly, therefore, the word "rate" has not been used in the Act in a technical sense, even if it has one. It would follow that the rule under challenge was properly framed under s. 75 read with the explanation.

It is however said that the explanation to s. 75 must be ignored as it is in conflict with main provision authorising the levy, namely, s. 73. The contention is that since s. 73 authorises only the imposition of a rate, that is, an impost based on annual value, the explanation to s. 75 which permits the impost to be based on capital value is outside the scope of the main provision and hence must be left out. I am entirely unable to accept this contention. The different parts of a statute are not intended to be in conflict with each other and, therefore, if not impossible they should be read as consistent parts of a whole. In the present case I find no difficulty in so reading them. Section 73 empowers the imposition of a tax which it calls a rate. Section 75 authorises the tax to be assessed either on capital or on annual value. Obviously the intention is that the tax is not a rate in the technical sense, if there is such a sense in which

it must be based on the annual value. The word "rate" must be understood, whatever it might in its technical sense mean, to have been used in the statute to describe a tax the basis of which can be capital value.

Then it was said that the explanation does not show that the basis of the tax was not intended to be annual value for one of the well known methods of finding out the annual value is first to find out the capital value and then from it the annual value by finding out what yearly income the capital would produce if invested at a rate of interest which would be considered reasonable at the current market conditions, and it is only for the purpose of finding out the annual value by this method that the explanation provides that the basis of the valuation for the imposition of the rate might be the capital value.

This seems to me to be quite an impossible contention. It is based on the assumption that what is imposed being a rate which must be based on annual value, the explanation must be read so as to harmonise with it. If this were not so, there would of course be no reason to contend that capital value had been mentioned only as the first step for ascertaining the annual value. But, there is nothing in the explanation to show that capital value has been mentioned only for the purpose of finding out the annual value from it. We have to read many words into it to produce that result. Such a thing is not permissible and there is no warrant for doing it either. Again, this reading does much more than bring about harmony; it makes the explanation quite superfluous, quite unnecessarily enacted. For, if the impost was a rate in the sense the appellants stated, it had necessarily to be based on annual value and there was, therefore, no need to enact by the explanation how it was to be based or to expressly provide that the annual value might be ascertained first by

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finding out the capital value or by any of the other recognised methods of doing so for all such methods would necessarily be available. Since, however, statutes are not enacted unnecessarily, the explanation must have been put there to serve a purpose. That purpose can only have been to provide that the rate, a tax, authorised by s. 73 could be lawfully imposed on either of the basis mentioned in the explanation. The contention of the appellants, therefore, that under s. 73 only an impost based on the annual value of the lands could be levied and r. 350-A read with r. 243 must be held to be beyond the powers given by the Act, cannot be sustained.

I turn now to the other ground on which the power to impose the tax on the basis of capital value was challenged. It was said that if the rule permitting the imposition on the basis of capital value had been authorised by the explanation to s. 75 or by any other provision in the Act, these provisions would be void and illegal as they could be beyond the legislative competence of the Bombay Legislature by whom the Act was enacted. This argument was founded on the Government of India Act, 1935.

The Bombay Act was passed in 1955, that is, before the Government of India Act, 1935 was passed. The rule under which power was taken to impose the rate on the basis of capital value was however framed in February 1947, that is, long after the Government of India Act 1935. After the Government of India Act had come into force, a new sub-section numbered sub section (2) was inserted in s. 73 of the Bombay Act which provided that "Nothing in this section shall authorise the imposition of any tax which the Provincial Legislature has no power to impose in the Province under the Government of India Act 1935." It was, therefore, contended that the power to impose the rate based on the capital value of lands even if conferred by

s. 73 or s. 75 of the Bombay Act would be void unless it was a tax which the Bombay legislature could lawfully impose under the Government of India Act. This contention is perfectly legitimate. I think I should point out now that as this case is concerned with assessment for the years 1947-48 and 1948-49, it is unnecessary to consider the question of legislative competence of the legislature of the State of Bombay under the Constitution.

The question then is: Is the tax imposed in the present case outside the powers of the Provincial legislature under the Government of India Act, 1935? The respective powers of the Provincial and Central legislatures as defined by that Act are contained in Lists II and I in the Seventh Schedule to it. Under item 42 of List II, the Provincial Legislatures had power to pass an Act imposing "taxes on lands and buildings." The Corporation contends that the Bombay Act comes fully within item 42 of List II. The Appellants, on the contrary contend that it is really a legislation under item 55 of List I under which the Central legislature has the power to legislate, to impose "taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies." They say that this is so because the Bombay Act permits the tax to be imposed on the basis of capital value of the lands. If this contention is correct, no doubt the imposition of the tax in this case would be illegal and void.

As I have earlier said, in my opinion, the appellants' contention is unsound. In my view, the Bombay Act imposes a tax on lands and is, therefore, within item 42 of List II. The fact that it has provided for that tax being quantified on the basis of the capital value of the land taxed does not take it out of item 42 of List II and place it under item 55 of List I. It is quite obvious that in providing the two items, namely, item 55 of List I and item 42 of

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List II, the makers of the Government of India Act contemplated two different varieties of taxes. The Provincial Legislature had been given the power to tax units of lands and buildings irrespective of their value and the Central Legislature the power to tax the value of assets. As was said in the *Provincial Treasurer of Alberta* v. *Kerr* (1). "The indentification of the subject-matter of the tax is naturally to be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to other sections is proper or necessary." Now the charging section in this case is in a manner of speaking s. 73. That permits only a tax on lands and buildings. We have not got in the records the resolution under s. 75 selecting the tax, on land and buildings as a tax which the municipality chose to impose. There is no question, however, that such a resolution was passed and it must have been in terms of s. 73. The charging provision that we have in this case does not, therefore, travel outside the power conferred by item 42 in List II. Nor has it been suggested that it is ambiguous.

The only question, therefore, is whether by providing that the tax might be levied at 1% of the capital value of the land taxed, the entire scope of the charging section is being altered and in reality the tax levied becomes a tax on capital asset? I feel no doubt that the question must be answered in the negative. The importance of the distinction between the levy of a tax and the machinery of its collection has often been pointed out by judicial pronouncements of the highest authority. One of the more recent of these is *R. C. Jall* v. *Union of India* (2). I suppose the machinery of collection would include the measure of the tax; in any case, I think, they are on a par. The subject-matter of taxation is obviously something other than the measure provided for the quantification of the tax.

(1) [1933] A.C. 710, 720. (2) A.I.R. (1962) S.C. 1281.

In *Ralla Ram* v. *Province of East Punjab* (1), the Federal Court upheld a Provincial statute which imposed a property tax assessed on the annual value of the property and rejected the contention that such a tax was really a tax on income which only the Centre could impose under item 54 of List I. I think it may be legitimately said that if a tax expressly levied on land and made assessable on its annual value, that is, its income, is not by reason of such method of assessment a tax on income, a tax on land cannot become a tax on capital value of assets because it is made assessable on the basis of the capital value of the land.

There are however other reasons why the tax in the present case cannot be said to be a tax on the capital value of assets. This tax is leviable on land on the basis of its capital value even though the land may be subject to a charge and even though that charge may exceed the capital value of the land. In such a case for the purpose of assessment the charge can be completely ignored and the tax levied notwithstanding that to the owner the property is of no value in view of the charge. If the tax was in reality a tax on capital value of assets it could not in the circumstances that I have imagined, be levied at all. That very clearly marks out the essential difference between this Act and an Act imposing a tax on capital value of assets. Another distinction is that in the case of a tax on capital value of assets the tax can be levied only on individuals owning the assets. That I think follows from the words of item 55 of List I. Under s. 85 of the Bombay Act, however, the present tax can be levied on a person in occupation of the land who holds it on a building lease taken from another. He is not the owner of it but nonetheless is liable to be taxed under the Act on the basis of the full capital value of the land and not on the value of his lease-hold only. If the tax was on the capital value of

(1) [1948] F. C. R. 207.

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assets, such a person could not have been so taxed. Again, under the same section a proportionate part of the tax which is primarily payable by the owner under the Act, may be recovered from a tenant in possession of the land and this would of course not be possible if the Bombay Act, was an Act imposing a tax on the capital value of assets of individuals for the assets, that is, land did not belong to the tenant at all. I think, therefore, that the contention of the appellants that the Act really authorises the imposition of a tax on the capital value of assets of individuals and is thus an Act which the Central legislature could pass under the Government of India Act and the Provincial legislature could not, must be rejected.

I would for these reasons dismiss the appeal with costs.

BY COURT: In accordance with the majority opinion the appeal is allowed with costs throughout.

Appeal allowed.