HIGH COURT OF GUJARAT *(D.B.)*

ANANT MILLS COMPANY LIMITED
V/S
STATE OF GUJARAT

Date of Decision: 04 December 1972

Citation: 1972 LawSuit(Guj) 114

Hon'ble Judges: P N Bhagwati, T U Mehta

Eq. Citations: 1973 GLR 826

Case Type: Special Civil Application

Case No: 233 of 1970

Subject: Constitution

Head Note:

Bombay Provincial Municipal Corporations Act, 1949 - Sec 2(1a), 13(1), 13(2), 49, 129(B), 466(2)(E), 411(Bb) - Constitution Of India - Art 14, 19(1)(F) - Ahmedabad Municipal Corporation Taxation Rules - Rule 20(1)(d) - 'annual letting value' - definition of - retrospective amendment of definition of 'annual letting value' - definition prior to 1.4.1970 and definition for period after 1.4.1970 - pending assessment for years up to and including 1968-69 - treatment to be given to pending assessment taking in view retrospective amendment of new definition - applicability or rent restriction provisions for fixing annual letting value for earlier year - validity of new definition - fixation of annual letting value on estimated market value - fixation of value for buildings which are ordinarily not let or are industrial premises - validity of basis of classification - method of valuation provided under proviso (c) - alleged to be in violation of Art 14 - tax imposed by reference to basis of valuation adopted in proviso (c) - whether tax imposed is

confiscatory or extortionate - whether tax imposed in case of buildings covered by proviso (c) is unreasonable - alleged to be violative of Art 19(1)(f) - retrospective investment of jurisdiction to Deputy Commissioner to make assessment of property - whether it is prejudicial to tax-payer - retrospective amendment under Sec 49 - whether unreasonable restriction and violative of Art 19(1)(f) - conservancy tax - power of corporation with retrospective effect to fix different rates of conservancy tax - fixing rate of 9% for certain class of property - whether unfair and unreasonable - alleged excessive delegation - retrospective addition of proviso in Sec 129(b) and Sec 13(2) - application of special rate of consequence tax - requirement to calculate cost of supplying conservancy service - held, introduction of new definition with retrospective effect does not make any discrimination so, far assessment for official year 1969-70 is concerned - only difference is that old definition required Commissioner to take into account rent restriction provisions and new definition expressly enjoins him to ignore them - proviso (c) prescribing statutory method of valuation in respect of buildings covered by it cannot be said to be violative of Art 14 - there is nothing to show that tax imposed by reference to basis of valuation adopted in proviso (c) is confiscatory an extortionate - tax imposed in case of buildings covered by proviso (c) is not unreasonable - proviso (c) is not violative of Art 19(1)(f) - Tax payers have not suffered any detriment at all by reason of Deputy Commissioner having jurisdiction or power to make assessment - no possible harm or prejudice can result to tax payers if Deputy Commissioner is retrospectively invested with jurisdiction - retrospective amendment of Sec 49 and Sec 13(1) do not impose any unreasonable condition - power conferred on Municipality under Sec 129(b) it fix different rates of conservancy tax for different class of property is not uncontrolled or unfettered - guidelines have been provided to control and regulate exercise of such power - there was no excessive delegation - no violation of Art 14 or Art 19(1) (f) involved in introduction of proviso in Sec 129(b) with retrospective effect and enactment of Sec 13(2) - new definition in Sec 2(1A) Clause (i) held to be violative of Art 14 in so far it applies to assessments for official years from commencement of Corporations Act up to and including official year 1968-69 - it is valid in so far as it applies to assessment for official year 1969-70 - but no rational basis for making distinction between appellants who make deposit of amount of tax assessed and appellants who do not - condition requiring deposit of amount of tax continues to clog right of appeal - Sec 406(2)(e) held to be discriminatory and violative of equal protection clause in Art 14 - Rule 42 is ultra vires and void as it provides that, if appeal preferred or

entertained against tax warrant shall not issue for recovery of amount of tax - petitions partly allowed

Acts Referred:

Constitution Of India Art 14

Bombay Provincial Municipal Corporation Act, 1949 Sec 13(2), Sec 129(b), Sec 2(1A)

Advocates: C T Dam, K M Desai, R K Shah, G N Desai, M M Dave, Purnanand & Co, S B Vakil, Purnanand & Co,K S Nanavati, I M Nanavati

Reference Cases:

Cases Cited in (+): **3**

Cases Referred in (+): **23**

Judgement Text:-

Bhagwati, C J

[1] These petitions represent one more round in an almost unending litigation which seems to be going on between owners of mills and factories on the one hand and the Municipal Corporation of the City of Ahmedabad (hereinafter referred to as the Corporation) on the other since the last several years. The Corporation has been worsted in every round and every time it has tried to make good the legal infirmities in its claim by amendatory legislation but the attempt has been unsuccessful and the Courts have almost consistently struck it down. The question in these petitions is whether one more attempt made by the Corporation to resuscitate its position by Ordinance No. 6 of 1969 and Act No. 5 of 1970 is destined to be successful.

[2] Though the main questions which arise for consideration In these petitions are identical, it is possible to divide the petitions broadly Into two groups, one group consisting of petitions relating to the official year 1969-70 and the other group consisting petitions relating to the official year 1970-71. The petitions in each group follow the same pattern both as to facts and also as to law and, therefore, instead of dealing with each petition separately, we propose to take up Special Civil Application No. 233 of 1970 as representative of the first group and Special Civil Application No. 300 of 1971 as representative of the second group. Both these petitions were argued as main

petitions and it was agreed between the parties that the affidavits in these two petitions may be treated as affidavits in all the other petitions. Even so far as these two petitions are concerned, there is hardly any difference in the material facts save for the official year and we would, therefore, be content to state the facts only in regard to Special Civil Application No. 233 of 1970.

[3] The first petitioner in Special Civil Application No. 233 of 1970 is a limited Company deemed to be registered under the Companies Act, 1956 and owns a textile mill situate within the limits of the Corporation. The textile mill consists of land, buildings, plant and machinery. The land admeasured about 1,36,138 square meters and has been taken by the first petitioner on a long term lease at the rent of Rs. 2,656/- per annum. The textile mill is closed since 1st October 1966 on account of financial difficulties and the first petitioner has been ordered to be wound up by an order made by this Court on 11th September 1967. The third petitioner is the Official Liquidator of the first petitioner. The second petitioner is joined in the petition because at one time a scheme of reconstruction was submitted by him to the Court and the scheme of reconstruction was sanctioned and he was appointed Director of the first petitioner by the Court. But subsequently the scheme of reconstruction fell through and the winding up of the first petitioner continued under the direction and supervision of the Court. That is why the second petitioner, though party to Special Civil Application No. 233 of 1970, has not joined as a petitioner in Special Civil Application No. 300 of 1971 which is a subsequent petition, because by the time the latter petition came to be filed, the scheme of reconstruction had been superseded and he had ceased to be a Director.

[4] Ever since the commencement of the Bombay Provincial Municipal Corporations Act, 1949, (hereafter referred to as 'the Corporations Act'), the assessments of the properties of the first petitioner to property tax were made by the Corporation by making entries in the Assessment Books relating to Special Property Section in accordance with the procedure prescribed in the Taxation Rules set out in Chapter VIII of Schedule A of the Corporations Act. A separate section of the Assessment Book relating to Special Property Section was prepared by the Commissioner for each official year and it was for assessment of property taxes on certain kinds of properties such as textile mills, factories, buildings of Universities etc., classified as special properties. The Assessment Books relating to Special Property Section for each official year were prepared and published by the Commissioner and authenticated by him before the close of the relevant official year. The rateable values of lands and buildings included In the Special Property Section were determined on the basis of a flat rate for one hundred square feet

of the floor area and in fixing the rateable values, plant and machinery situate in or upon the lands and buildings was also taken into account as provided in Rule 7 clauses (2) and (3) of Taxation Rules. There was no complaint against this method of assessment except that in the application of this method there were certain grievances which were sought to be remedied by filing appeals to the Chief Judge, Small Causes Court, Ahmedabad. But when the assessments came to be made for the official years 1964-65 and 1965-66, there was some increase in the rateable values fixed by the Commissioner which was not approved by the owners of some mills and factories. Therefore, being aggrieved by the assessments made upon them, they preferred writ petitions in the Supreme Court under Article 32 of the Constitution challenging the validity of the Assessment Books relating to Special Property Section by which the Corporation sought to levy property tax on them for the official years 1964-65 and 1965-66. So far as the official year 1966-67 is concerned, the Commissioner made initial entries in the Assessment Book relating to Special Property Section under Rule 9 clauses (a), (b), (c) and (d) on the same basis on which the assessments for the previous two official years were made, but before the Commissioner could proceed to complete the assessments, the owners of other mills and factories preferred writ petitions in the Supreme Court under Article 32 of the Constitution challenging the validity of the initial entries made in the Assessment Book relating to Special Property Section for the official year 1966-67. All these writ petitions relating to the official years 1964-65, 1965-66 and 1966-67 were heard together and by a judgment delivered on 21st February 1967 and reported in New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation, A.I.R. 1967 S.C. 1801, the Supreme Court allowed the writ petitions and held the relevant entries in the Assessment Books to be invalid on two main grounds. The first ground was that the flat rate method according to the floor area was wholly inapplicable, for the conditions pre-requisite for its applicability did not exist at the relevant time: it was also not a method which was generally recognized by authorities on rating: applied indiscriminately, it was bound to produce inequalities as there was no classification of factories on any rational basis and it was therefore violative of Article 14 of the Constitution and consequently in making the assessment, the Corporation "did not observe the law and failed in its duty to determine rateable value of each building and land comprised in each of the textile factories in terms of Rule 9(b)". The other ground was that Rule 7 clauses (2) and (3) were ultra vires and void : Rule 7(2) which empowered the Corporation to take into account plant and machinery for the purpose of determining the rateable value of lands and buildings was beyond the legislative competence of the State, since the State Legislature itself had no power to levy tax on plant and machinery situate in or upon land and building and Rule

7(3) which conferred power on the Commissioner to specify plant and machinery which should be deemed to form part of lands or buildings for the purpose of fixing the rateable value, suffered from the vice of excessive delegation of legislative power : plant and machinery was therefore not liable to be taken into account for determining the rateable value for assessment of property tax on lands and buildings. The Supreme Court accordingly issued a writ of mandamus in each petition directing the Corporation to treat the relevant entries in the Assessment Books for the official years 1964-65, 1965-66 and 1966-67 relating to Special Property Section as invalid and cancelled and to prepare fresh assessment lists for those official years relating to textile mills and other properties dealt with in the Special Property Section.

[5] Though the Supreme Court directed the Corporation to prepare fresh assessment lists relating to properties included in the Special Property Section for the official years 1964-65, 1965-66 and 1966-67, the Corporation was unable to do so, as it was felt, in view of a decision of a Division Bench of this Court in Ahmedabad Municipality v. Keshavlal, 6 G.L.R. 228 where similar though not identical provisions of the Bombay Municipal Boroughs Act, 1925 came up for consideration, that the Corporation had no power to assess and levy property tax for any official year after the official year had ended : all steps in the process of assessment and levy starting from the making of initial entries under clause (a) of Rule 9 and ending with authentication of the Assessment Book under Rule 19 clause (i), as it then stood, were required to be completed before the close of the official year.' The Legislature, therefore, in order to get over this difficulty, enacted Gujarat Act VIII of 1968 on 29th March 1968 and by this Amending Act introduced inter alia a new sec. 152A in the Corporations Act. This new section conferred power on the Corporation to assess or reassess property taxes if the original assessment was affected by a decree or order of a Court on either of the two grounds on which the Supreme Court set aside the assessments for the official years 1964-65, 1965-66 and 1966-67 in New Manek Chowk Mills' Case. The Corporation was thus empowered under sec. 152A to assess or re-assess property taxes on the lands and buildings of the first petitioner and the petitioners in the other petitions for the official years 1964-65, 1965-66 and 1966-67. The Amending Act also substituted a new Rule 7 for the old Rule which contained the offending clauses (2) and (3) and a new Rule 21-B was enacted which made it possible for the Commissioner in certain contingencies to prepare and complete the Assessment Book even after the expiration of the official year. Rule 21-B impliedly recognised that having regard to the scheme of the Corporations Act and the Rules, the assessment of property tax for any particular official year must be completed before the expiry of the official year and thus gave legislative

approval to the decision of this Court in Municipal Corporation v. Keshavlal where it was held by a Division Bench consisting of N. G. Shelat J. and myself, while construing the corresponding provisions relating to assessment and levy of property tax contained in the Bombay Municipal Boroughs Act, 1925-which provisions are in material respects similar to the provisions contained in the Corporations Act and the Rules-that the procedure for assessment and levy of property tax must be completed before the expiry of the official year and no assessment can be made after the official year has ended.

[6] No sooner the Amending Act became law, the Corporation relying on sec. 152-A initiated proceedings for re-assessment of the lands and buildings of the petitioners to property tax for the official years 1964-65, 1965-66 and 1966-67. The Assessor and Collector of the Corporation served on each of the petitioners a requisition dated 4th April 1968 under Rule 8(1) requiring him to furnish within fifteen days from the service of the requisition a true and correct return of the particulars set out at the foot of the requisition so as to enable the Corporation to reassess property tax on the lands and buildings of the petitioners. The petitioners thereupon preferred Special Civil Application No. 670 of 1968 and other allied petitions challenging the competence of the Corporation to initiate proceedings for reassessment of the lands and buildings of the petitioners as also the validity of the requisitions issued by the Assessor and Collector of the Corporation. The main contention of the petitioners was that assessment of property tax for any particular official year could not be made after the expiry of the official year except in cases falling within Rule 21-B and since the cases of the petitioners were not covered by Rule 21-B, the Corporation had no power under sec. 152-A to re-assess property tax on lands and buildings of the petitioners for the official years 1964-65, 1965-66 and 1966-67. There was also a subsidiary contention put forward on behalf of the petitioners, namely, that some of the particulars demanded in the impugned requisitions were beyond the scope of Rule 8(1). The subsidiary contention found favour with the Court but the main contention was negatived and this Court by a judgment dated 3rd July 1969 struck down the impugned requisitions in so far as they contained a demand for certain particulars but upheld the power of the Corporation under sec. 152-A to reassess the lands and buildings of the petitioners to property tax for the official years 1964-65, 1965-66 and 1966-67, notwithstanding the expiration of those official years. The proceedings for reassessment of the lands and buildings of the petitioners for the official years 1964-65,1965-66 and 1966-67 are accordingly pending before the Corporation.

[7] Now it may be pointed out at this stage that for each official year the Corporation

used to pass a Resolution under sec. 99 determining the rates at which property taxes shall be levied for the particular official year. So far as conservancy tax is concerned, the general rate determined by the Corporation was three per cent but for the official years upto 1966-67, a special rate of seven and half per cent was fixed for hotels, clubs, stables, theatres or cinemas, or other large premises including mills and factories, registered under the Factories Act where fifty or more workmen are employed in manufacture in all the shifts. The result was that conservancy tax was charged at the rate of seven and half per cent of the rateable value on the lands and buildings of the petitioners for the official years upto 1966-67.

[8] For the official year 1967-68 also the Corporation passed a Resolution under sec. 99 determining the rates at which property taxes shall be levied and the general rate of conservancy tax was fixed at three per cent as before but the special rate for hotels, clubs, stables, theatres or cinemas or other large premises including mills and factories registered under the Factories Act where fifty or more workmen are employed in manufacture in all the shifts, was raised from seven and half per cent to nine per cent. The rate of general tax for ordinary properties was fixed on a graduated scale but on properties owned by textile mills for cotton, art silk, rayon, woollen or any one or more of these purposes, the rate was a uniform one, namely, thirty per cent. Now the powers of the Commissioner under the Taxation Rules were deputed by him to the Deputy Municipal Commissioner (Revenue and Law) by virtue of an Office Order No. 1112 dated 21st April 1966 issued under sec. 49 sub-sec. (1) and the Deputy Municipal Commissioner, therefore, determined the rateable value of the lands and buildings of the petitioners and in conformity with his decision, amended the initial entries in regard to rateable value in the Assessment Book. The rateable value was determined by the Deputy Municipal Commissioner on the basis of what he conceived to be the Contractors Test Method. This method, according to the petitioners, was wholly inappropriate and irrelevant for determining the rateable value of the lands and buildings of the petitioners and, in any event, in the application of this method, the Deputy Municipal Commissioner committed various lapses and errors. The result was that the rateable value of the lands and buildings of the petitioners shot up to a very high figure, more than hundred per cent higher than what it was for the earlier official year 1966-67 which itself was very much on the high side. The Deputy Municipal Commissioner calculated the amount of conservancy tax at the special rate of nine per cent and the amount- of general tax at the rate of thirty per cent of the net rateable value and made the necessary entries in the Assessment Book showing the amount of the property taxes leviable on the premises of the petitioners. Since the rateable value and

consequently the amount of property taxes determined by the Deputy Municipal Commissioner were exorbitantly high, the petitioners preferred two appeals before the Chief Judge of the Court of Small Causes, Ahmedabad, one against the rateable value and the other against the tax. The Chief Judge was, however, precluded from hearing these appeals since the amount of the tax was not deposited by the petitioners as required by sec, 406(2)(e). |The petitioners had, therefore, no choice but to file writ petitions in this Court challenging the validity of the assessments made by the Deputy Municipal Commissioner. The same position also obtained in regard to the official year 1968-69 : the facts relating to the official year 1968-69 followed an identical pattern as the facts relating to the official year 1967-68. The assessments to property tax made by the Deputy Municipal Commissioner for the official year 1968-69 were also, therefore, challenged by the petitioners by filing writ petitions on the same grounds on which ,the assessments for the official year 1967-68 were challenged in the earlier petitions.

[9] These writ petitions challenging the assessments for the official years 1967-68 and 1968-69 were heard together by a Division Bench of this Court consisting of N. K. Vakil J. and myself and by a judgment dated 29th October 1969 Anant Mills Co. Ltd. v. Ahmedabad Muni. Cop. Sp.C.A. 662/68, we upheld the following contentions urged on behalf of the petitioners namely :-

(1) The power to investigate and dispose of complaints entrusted under Rule 18 to the Municipal Commissioner being a quasi judicial power, could not be deputed by the Municipal Commissioner to the Deputy Municipal Commis sioner under sec. 49 sub-sec. (1): the purported deputation of this powerunder the Office Order dated 21st April 1966 was, therefore, beyond the power of the Municipal Commissioner and the Deputy Municipal Commissioner had no jurisdiction or authority to investigate and dispose of complaints made by the petitioners and determine the rateable value of the lands and buildings of the petitioners.

(2) Clause (e) of sub-sec. (2) of sec. 406 which required the appellant before the Chief Judge of the Court of Small Causes to make a deposit of the amount of the property tax as a condition of hearing of the appeal and obliged the Chief Judge of the Court of Small Causes to dismiss the appeal if the deposit was not made, was violative of Article 14 of the Constitution and was accordingly ultra vires and void.

(3) Rule 42 of the Taxation Rules was ultra vires and void as it was inseparably connected with sec. 406 sub-sec. (2) clause (e) and could not stand indepen dently of that clause.

(4) The Corporation had no power to fix different rates of conservancy tax for different classes of premises and the fixation of a special rate of nine per cent for conservancy tax in respect of large premises including mills and factories was, therefore, illegal and void,

and on this view quashed and set aside the orders made by the Deputy Municipal Commissioner determining the rateable value of the lands and buildings of the petitioners as also the Municipal Bills, Notices Demand and Distress Warrant Cards issued by the Municipal authorities and also issued a writ declaring sec. 406 sub-sec. (2) clause (e) and Rule 42 of the Taxation Rules to be ultra vires and void and the special rate of nine per cent for conservancy tax in respect of hotels, clubs, stables, theatres and cinemas or other large premises including mills and factories registered under the Factories Act where fifty or more workmen are employed in manufacture in all the shifts, to be invalid.

[10] The official year 1969-70 having in the meantime commenced, the Commissioner took up for preparation the Assessment Book for the official year 1969-70 and under Rule 21, adopted the entries of the official year 1968-69 as the entries for the official year 1969-70. The petitioners filed their complaints against the amount of rateable value entered in the Assessment Book but before the complaints were taken up for hearing and Investigation, the Governor of Gujarat promulgated an Ordinance, namely, Ordinance No. 6 of 1969 on 23rd December 1969, amending certain provisions of the Corporations Act with retrospective effect, with a view to rectifying the defects pointed out by this Court in the judgment delivered on 27th October 1969. It is not necessary to make any detailed reference to the provisions of this Ordinance, since within a short time it came to be replaced by Gujarat Act 5 of 1970 which came into force with effect from 31st March 1970. This Ordinance made far-reaching changes in the Corporations Act so far as the determination of rateable value was concerned and since its provisions adversely affected the petitioners by validating all past assessments which were declared to be illegal by judicial decisions and also entitled the Corporation to make

assessment of property taxes on a highly irrational basis leading to exorbitant and extortionate taxation, the petitioners filed Special Civil Application No. 233 of 1970 and other similar petitions belonging to the first group challenging the constitutional validity of various provisions of the Ordinance and seeking to restrain the Corporation from enforcing those provisions against the petitioners. We may point out here that, as in the case of the earlier official years, so also for the official year 1969-70, a Resolution was passed by the Corporation under sec. 99 determining the general rate of conservancy tax at three per cent but prescribing a special rate of nine per cent for "hotels, clubs, stables, theatres or cinemas or other large premises including mills and factories registered under the Factories Act where fifty or more workmen are employed in manufacture in all the shifts" and the validity of this Resolution was also challenged in these writ petitions along with the validity of the earlier Resolutions passed by the Corporation for the previous official years.

[11] Whilst these writ petitions were pending, Gujarat Act 5 of 1970 was enacted by the Legislature and it came into force on 31st March 1970. It repealed Ordinance 6 of 1969 after reenacting ipsisima verbs the material provisions of that Ordinance. Obviously this necessitated amendment of the writ petitions and the petitioners, therefore, with leave of the Court, amended the Writ petitions and directed the challenge against the constitutional validity of the provisions of Gujarat Act 5 of 1970. The petitioners also challenged by way of amendment the determination of rateable value made by the Deputy Municipal Commissioner, since, in the meantime, on the strength of the amendment made by Gujarat Act 5 of 1970, the Deputy Municipal Commissioner had proceeded to dispose of the complaints before him and to determine the rateable value of the lands and buildings of the petitioners and the amount of property tax leviable on the premises of the petitioners on the basis of such rateable value by calculating conservancy tax at the special rate of nine per cent and general tax at the rate of thirty per cent. The petitioners also introduced a specific challenge against the validity of the Resolutions passed by the Corporation determining the special rate of conservancy tax at nine per cent for the official years 1967-68, 1968-69 and 1969-70. It is these amended writ petitions belonging to the first group which have now come up for hearing before us.

[12] So far as the petitions belonging to the second group relating to the official year 1970-71 are concerned, we have taken Special Civil Application No. 300 of 1971 as representative of that group. That petition is also by Anant Mills Company Limited (In Liquidation) which is the first petitioner in Special Civil Application No. 233 of 1970. The

facts of that case are almost identical with the facts of Special Civil Application No. 233 of 1970 barring only the difference in dates and certain other particulars and it is, therefore, not necessary to reproduce the same over again. Whatever we say in regard to Special Civil Application No. 233 of 1970 will apply equally to Special Civil Application No. 300 of 1971 and other petitions belonging to 1970-71 group. Wherever there are any differences or any features peculiar to any one or more of these writ petitions, we shall indicate them while dealing with the arguments.

[13] We may now proceed to set out the grounds of challenge urged on behalf of the petitioners. The main arguments were advanced by Mr. C. T. Daru appearing on behalf of the petitioners in Special Civil Applications Nos. 233 of 1970 and 300 of 1971 and they were supplemented by the learned advocates appearing on behalf of the petitioners in the other petitions. These arguments may be broadly divided under the following heads :-

(A) (i) Sec. 2(1 A) clause (i) provides one measure of tax for the period prior to 1st April 1970 and another measure of tax for the period subsequent to it. This classification made by the section is discriminatory and violative of the equal protection clause contained in Article 14 of the Constitution.

(ii) Though the new definition of "annual letting value" in clause (i) of sec. 2(1A) is on its face uniformly applicable to assessments of all lands and buildings prior to 1st April 1970, it is in its operation and effect confined only to assessment proceedings pending on 3rd December 1969 and has no impact on assessments, final and closed before that date. It thus makes a classification between property owners whose assessments are final and closed before 3rd December 1969 and property owners whose assessments are pending on that date and this classification is arbitrary and irrational and has no reasonable nexus with the object of levying the tax. Clause (i) of sec. 2(1A) is, therefore, discriminatory in its operation and effect and is void as offending Article 14 of the Constitution.

(iii) Clause (i) of sec. 2(1A) directs the Commissioner to ignore the provisions of the Rent Act in determining the annual letting value and this has the effect of making the tax unreasonable and excessive, particu larly in case of old properties where the free market rent would be very much higher than the

standard rent permissible under the Rent Act. The impugned clause, therefore, imposes unreasonable restrictions on the right of the petitioners to hold property and is consequently bad as being violative of Article 19(1)(f). of the Constitution.

(B) (i) The definition of 'annual letting value' in clause (ii) of sec. 2(1 A) embodies the classical concept of 'annual letting value' which takes into account the restriction of standard rent provided under the Rent Act but proviso (c) to clause (ii) of sec. 2(1A) lays down a wholly different method which ignores the restrictive provisions of the Rent Act and seeks to determine the annual letting value on the basis of a free market in rent. The method of determining the annual letting value prescribed in proviso (c) does not yield the annual letting value as con templated under clause (ii) of sec. 2(1 A). There is a wide divergence between the 'annual letting value' obtained by applying the method prescribed in clause (ii) of sec. 2(1A) and the 'annual letting value' obtained by applying the method prescribed in proviso (c). Proviso (c) to clause (ii) of sec. 2(1 A) thus makes an unjust discrimination between owners of properties covered by that proviso and owners of the rest of the properties and is consequently violative of Article 14 of the Constitution.

(ii) The tax levied by following the method prescribed in proviso (c) to clause (ii) of sec. 2(1A) is excessive, oppressive and unreasonable and proviso (c) to clause (ii) of sec. 2(1 A) which authorizes imposition of such excessive, oppressive and unreasonable tax is, therefore, violative of the fundamental right guaranteed under Article 19(1)(f). of the Constitution.

(C) (i) The retrospective conferment of power on the Municipal Commissioner by the amendment of sec. 49 to depute even a quasi-judicial power or duty to a Deputy Municipal Commissioner and the enactment of sec. 13(1) of Gujarat Act 5 of 1970 suffer from the vice of procedural un reasonableness because they validate assessment made by the Deputy Municipal Commissioner for a past official eat which was void when made and empower the Corporation to collect tax purported to be levied under such void assessment, without providing a machinery for fresh hearing and

as sessment. The amendment of sec. 49 and the enactment of sec. 13(1) of Gujarat Act 5 of 1970 thus amount to legislative assessment without giving a hearing and going through the process of assessment and they are, therefore, clearly violative of the fundamental right to hold prop erty guaranteed under Article 19(1)-(f) of the Constitution.

(ii) Sec. 13(1) of Gujarat Act 5 of 1970 bars challenge in a Court of law to any assessment made by a Deputy Municipal Commissioner for any past official year, even though such challenge may be based on any ground other than lack of jurisdiction in the Deputy Municipal Com missioner. The effect, of sec. 13(1) of Gujarat Act 5 of 1970 is to cure any invalidity which may be there in an assessment made by the Deputy Municipal Commissioner for any past official year and thus takes away the right of the property owner to challenge the validity of the assessment on any ground whatsoever. This is clearly violative of the funda mental right guaranteed under .Article 19(1)(f). of the Constitution and sec. 13(1) of Gujarat Act 5 of 1970 is,, therefore, bad on that ground.

(D) (i) The proviso to sec. 129(b) introduced with retrospective effect by Gujarat Act 5 of 1970 confers naked and arbitrary power on the Corporation to select and classify properties in such manner as it likes and having made classification of properties at its sweet will, to fix such rate of tax for different classes of properties as it chooses and there is no guiding policy or principle laid down by the Legislature to control and regulate the exercise of this power by the Corporation. It is, therefore, constitution ally invalid on two grounds : (1) it offends the equal protection clause contained in Article 14 of the Constitution; and (2) it suffers from the vice of excessive delegation of legislative power.

(ii) The introduction of the proviso in sec. 129(b) with retrospective effect and the enactment of sec. 13(2) of Gujarat Act 5 of 1970 have the effect of validating the resolutions passed by the Corporation fixing 9 per cent as the rate of conservancy tax for hotels, clubs, stables, theaters or cinemas and other large premises including mills and factories when the rate of conservancy tax fixed for other properties was only 3 per cent, even though

these resolutions were passed without any policy or principle to guide the Corporation and they were, therefore, bad as being violative of Articles 14 and 19(1)(f). of the Constitution.

(iii) The resolutions passed by the Corporation for the official years 1967-68 to 1970-71 fixing the rate of conservancy tax at 9 per cent in respect of hotels, clubs, stables, theaters or cinemas and other large premises including mills and factories when the conservancy tax fixed in respect of other properties was only 3 per cent were not in conformity with the guiding principle laid down by the Legislature and were, therefore, ultra vires the proviso to sec. 129(b).

(E) Sec. 406(2)(e) and sec. 41 1(bb) make unjust discrimination be tween two classes of persons who can deposit the amount of tax assessed with out undue hardship, one class consisting of persons who deposit the amount of tax assessed and the other consisting of those who do not. There is no reasonable nexus between these two classes of persons and the object of the provision in regard to appeal. The introduction of the proviso in sec. 406(2)(e) with retrospective effect has not the effect of curing the vice or infirmity in sec. 406(2)(e) pointed out by this Court in its decision dated 27th October 1969. Sec. 406(2)(e) and sec. 411(bb) are, therefore, violative of Article 14 of the Constitution and must be held to be ultra vires.

We shall now proceed to examine the validity of these grounds in the order in which we have set them out.

[14] Re : Grounds (A) and (B) generally :- It would be convenient at the outset to set out briefly the relevant provisions of law which have a bearing on the determination of these grounds of challenge. Chapter XI of the Corporations Act deals with the subject of municipal taxation. Sec. 127 which is the first section in this Chapter, enumerates the taxes to be imposed under the Corporation Act. Sub-sec. (1) of that section lays down obligatory taxes which must be imposed by the Corporation and sub-sec. (2) refers to other taxes which may be imposed at the option of the Corporation. The property taxes constitute an item of obligatory taxes which, says sec. 127, sub-sec. (1), shall be imposed by the Corporation. Sec. 129 lays down that for the purposes of sub-sec. (1) of

sec. 127 property taxes shall comprise water tax, conservancy tax and general tax which shall, subject to the exceptions, limitations and conditions there provided, be levied on buildings and lands in the City at such percentage of their rateable value as may be determined by the Corporation and so far as general tax is concerned, it may be levied, if the Corporation so determines, on a graduated scale. Sec. 99 confers power on the Corporation to determine, subject to the limitations and conditions prescribed in Chapter XI, the rates at which municipal taxes shall be levied in the next ensuing official year. The rates determined by the Corporation under sec. 99 are, as slated in sec. 129, to be applied to the rateable value and "rateable value" is defined in sec. 2(54). The original sec. 2(54) prior to its amendment by Gujarat Act 8 of 1968 provided that "rateable value" means the value of any building or land fixed in accordance with the provisions of the Corporations Act and the Rules for the purpose of assessment to property taxes. The Rules mentioned here were the Taxation Rules set out in Chapter VIII of Appendix IV to the Schedule to the Corporations Act. Rule 7(1) as it stood prior to its amendment by Gujarat Act 8 of 1968 declared that the rateable value of any building or land shall be determined by deducting from the amount of the annual rent for which such building or land might reasonably be expected to be let from year to year a sum equal to ten per cent of the said annual rent. Gujarat Act 8 of 1968 which came into force on 29th March 1968 substituted the following definition of "rateable value" in sec. 2(54) :-

> "(54) 'rateable value' means the annual letting value of any building or land whether fixed with reference to any given premises or otherwise in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes and 'annual letting value' means the annual rent for which any building or land, exclusive of furniture or machinery contained or situate therein or thereon might reasonably be expected to Jet from year to year with reference to its use, and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land on account of occupation, taxes, insurance or other charges incidental thereto".

Rule 7 was also substituted by a new Rule and what was originally Rule 7(1) became with some minor changes Rule 7(3). Then came Ordinance No. 6 of 1969 which came into force on 3rd December 1969. It substituted the following definition in sec. 2(54) with retrospective effect :

"(54) 'rateable value' means the value of any building or land whether fixed with reference to any given premises or otherwise in accordance with the provisions of this Act and the rules for the purpose of assessment to property taxes; and 'annual letting value' means the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not in force, reasonably be expected to let from year to year with reference to its use, and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto;"

Rule 7(3) was also amended with retrospective effect to make it correspond with the new definition of "rateable value" in sec. 2(54). Ordinance No. 6 of 1969 was then replaced by Gujarat Act 5 of 1970 which came into force on 31st March 1970. This Act made a radical departure in the definitions of "annual letting value" and "rateable value" and sec. 7 of the Act introduced the following definitions with retrospective effect by adding sec. 2(A) and substituting sec. 2(54):

"(IA) 'annual letting value' means, - (i) in relation to any period prior to 1st April, 1970, the annual rent for which any building of land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might, if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were not in force, reasonably be expected to let from year to year with reference to its use;

(ii) in relation to any other period, the annual rent for which any building or land or premises, exclusive of furniture or machinery contained or situate therein or thereon, might reasonably be expected to let from year to year with reference to its use; and shall include all payments made or agreed to be made to the owner by a person (other than the owner) occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto :

Provided (hat, for the purpose of sub-clause (ii),-

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

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

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

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

Rule 7(3) was also amended with retrospective effect by sec. 12 of this Act and in its amended form, it read as follows:-

"7. (3) In order to fix the rateable value of any building or land or premises assessable to a property tax there shall be deducted from the amount of the

annual letting value of such building, land or premises a sum equal to ten per cent of such annual value and the said deduction shall be in lieu of all allowances for repairs or on any other account whatever".

Having set out the various changes through which the definitions of 'rateable value' and 'annual letting value' passed, we may now proceed to examine the validity of these grounds of challenge in seriatim.

[15] Re : Ground (A)(i) :- It is clear from the above resume of the relevant provisions of the Corporations Act and the Taxation Rules that the assessment of property tax depends on 'rateable value' and by reason of sec. 2(54) read with Rule 7(3), 'rateable value' in its turn depends on what is the 'annual letting value' of the property. The 'annual letting value' is thus the pivot on which rests the entire superstructure of property taxes. Sec. 2(1 A) introduced in the Corporations Act with retrospective effect by Gujarat Act 5 of 1970 gives two definitions of 'annual letting value', one for the period prior to 1st April 1970 in clause (i) and the other for the subsequent period in clause (ii). Both definitions are given retrospective operation from the date of commencement of the Corporations Act. The argument of the petitioners based on these definitions was that they provide different measures of tax for different periods, one for the period prior to 1st April 1970 and another for the period subsequent to it and they are, therefore, discriminatory and violative of the equal protection clause of the Constitution. This argument is, in our opinion, wholly unsustainable and cannot be accepted. It is indeed difficult to comprehend it. We fail to see how providing one measure of tax for the period prior to 1st April 1970 and another for the period subsequent to it can be said to be discriminatory in any sense of the term. No one has the right to continuance of the same measure of tax : no one can say that it shall not be altered at any time. And if it is altered at a particular point of time, such alteration cannot be regarded as discriminatory, merely because the measure of tax was different before the alteration. If the Legislature wanted to alter the incidence of tax by changing the definition of 'annual letting value', it had necessarily for that purpose to decide from what date the new difmition should come into operation and it decided that it should be from 1st April 1970. That is a matter exclusively for the Legislature to determine and the propriety of that determination is not open to question in Courts. Vide Inder Singh v. The State of Rajasthan, A.I.R. 1957 S.C. 510. The decision of the Supreme Court in Hathising Mfg. Co. v. Union of India, A.I.R. 1960 S.C. 923 also lays down the same proposition. There in that case the constitutional validity of sec. 25FFF was challenged on the ground that it

discriminated between employers who closed their undertaking on or before 28th November 1956 being the date from which the section was brought into force retrospectively and employers who close their undertakings after that date. This challenge was negatived by the Supreme Court in words which are equally applicable in the present case :-

> "Article 14 of the Constitution is not violated by making by law a distinction between employers who close their undertakings on or before November 27, (28 ?) 1956, and those who close their undertakings after that date. The State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws, but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative, no discrimination is practised. When Parliament enacts a law imposing a liability as flowing from certain transactions prospectively, it evidently makes a distinction between those transactions which are covered by the Act and those which are not covered by the Act, because they were completed before the date on which the Act was enacted. This differentiation, however, does not amount to discrimination which is liable to be struck down under Art. 14. The power of the Legislature to impose civil liability in respect of transactions completed even before the date on which the Act is enacted does not appear to be restricted. If, as is conceded-and in our judgment rightly-by a statute imposing civil liability in respect of post enactment transactions, no discrimination is practised, by a statute which imposes liability in respect of transaction which have taken place after a date fixed by the statute, but before its enactment, it cannot be said that discrimination is practised. Article 14 strikes at discrimination in the application of the laws between persons similarly circumstanced, it does not strike at a differentiation which may result by the enactment of a law between transactions governed thereby and those which are not governed thereby. If when by statute a civil liability is imposed upon transactions which were otherwise subject to such liability be accepted, every law which imposes civil liability will be liable to be struck down under Art. 14 even if it comes into operation on the date on which it is passed, because immediately on its coming into operation, discrimination will arise between transactions which will be covered by the law after its coming into force and transactions before the law came into force which will not naturally be hit by it. If a statute creating a civil liability which is strictly

perspective is not hit by Art. 14, a law which imposes liability on transactions which have taken place before the date on which it was enacted, cannot also be hit by Art. 14.

These observations afford a complete answer to the contention of the petitioners under this head of challenge.

[16] Re : Ground (A)(ii) :- It is clear from what we have said above that though clause (i) of sec. 2(1 A) was brought into the Corporations Act only on 31st March 1970 when Gujarat Act 5 of 1970 came into force, the definition of 'annual letting value' it gives was introduced into the Corporations Act on an earlier date, namely, 3rd December 1969, when sec. 2(54) as it then existed was substituted by Gujarat Ordinance 6 of 1969. Prior to 3rd December 1969 when Gujarat Ordinance 6 of 1969 was promulgated, the definition of 'annual letting value' which prevailed was that set out in Rule 7(1) as it stood upto the enactment of Gujarat Act 8 of 1968 and thereafter as formulated in sec. 2(54) read with Rule 7(3). Both these definitions which operated at different times prior to 3rd December 1969 embodied the classical concept of 'annual value' which is to be found in almost all legislations in the country dealing with municipal rating. That concept is that the annual rent for which any building or land might reasonably be expected to be let from year to year without reference to its use shall be taken to be its 'annual letting value'. The annual letting value is thus the annual rent which a hypothetical tenant would pay for a hypothetical tenancy of the building or land. It does not matter whether the building or land is actually let or not. If it is let, the annual rent may afford some evidence of the hypothetical rent but it is the hypothetical rent which is the measure of the annual letting value and not the actual rent. Now obviously in determining the hypothetical rent which a landlord can reasonably expect from a hypothetical tenant, any legislation which restricts or controls rent must be taken into account, because no landlord can reasonably expect his tenant to pay rent in excess of that permitted by law. The concept of what can be lawfully recovered as rent must necessarily enter as a component in the determination of the question of reasonableness. The landlord cannot reasonably expect to receive rent which is unlawful or prohibited by rent restriction legislation. The rule of reason requires everyone to observe the mandate of law and that which would be contrary to such mandate would be clearly unreasonable. Here the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as the Rent Act) is in force within the area of the municipal limits since the commencement of the Corporations Act and Part II of that Act which provides inter alia

for restriction of rents applies to premises let for residence, education, business, trade or storage and also open land let for building purposes. Sec. 7 which occurs in Para II prohibits recovery of rent in excess of the standard rent and makes it illegal. Vide the marginal note. It provides that except where the rent is liable to periodical increment by virtue of an agreement entered into before the specified date, it shall not be lawful to claim or receive on account of rent for any premises any increase above the standard rent, save in certain exceptional cases which are not material for our purpose. There is, of course, no sanction provided in the Rent Act against breach of this prohibition. Sec. 20 does confer on the tenant a right to recover any amount paid on account of rent, from the landlord which is in excess of the standard -rent but that right is also limited and it can be exercised only within a period of six months from the date of payment. Even so, the fact remains that sec. 7 has made it unlawful for the landlord to claim or receive any amount by way of rent in excess of the standard rent and if he does so, he would be acting contrary to the m indite of that section and his act would be unlawful. The restriction of standard rent, must, therefore, enter in the hypothesis and the landlord cannot reasonably expect to get from' the hypothetical tenant anything more than the standard rent. The annual letting value cannot in the circumstances exceed the standard rent according to the classical concept of 'annual letting value' which is to be found in the definitions prior to 3rd December 1969.

[17] This would appear to be clear on principle but for a long time a wrong view of the law prevailed in the State of Bombay until it was set right by the Supreme Court in Corporation of Calcutta v. Sm. Padma Debt, A.I.R. 1962 S.C. 551. The Bombay High Court had taken the view in Gulam Ahmed Rogay v. Bombay Municipality, (1950) 53 Bom. L.R. 145 that in determining the annual letting value for the purpose of sec. 154 of the City of Bombay Municipal Act, 1888, the Rent Act had no relevance and the annual rental value was not limited to the standard rent contemplated under the Rent Act. This view was based on the majority judgment of the House of Lords in Poplar Assessment Committee v. Roberts, (1922) 2 A.C. 93. But in Corporation of Calcutta v. Sm. Padma Debt, (supra), the Supreme Court expressed its disapproval of the view taken by the majority Law Lords in Poplar Assessment Committee v. Roberts. The Supreme Court quoted with approval the following observations of Atkin L. J.,

> "If no higher rent than the standard rent and statutory increases is enforceable, as a matter of common sense that seems to be the limit of the rent a tenant can be reasonably expected to give.....How then is the annual rent to be ascertained ?

It is obvious that the definition presupposes that the premises are deemed to be vacant and are deemed to be capable of being let, and after pointing out that these observations were accepted by Lord Carson in his dissenting judgment in Poplar Assessment Committee's case, referred to the following passage from the dissenting judgment :-

"I cannot persuade myself that it is possible to ask the assessment authority to enter into such super speculative and hypothetical regions, and I am of opinion that the only rent we have to consider is a rent de jure recoverable and not a voluntary promise which cannot be enforced,

and concluded by saying: "With great respect to the other learned Lords, we are inclined to agree with the observations of Atkin L. J., as approved by Lord Carson". The Supreme Court thus clearly accepted the minority view of Lord Carson and rejected the majority view of the other Law Lords. The Supreme Court then proceeded to point out that in any event there were two distinguishing features which made the ratio of the decision in Poplar Assessment Committee 's case inapplicable to the case before them, which was a case arising under the Calcutta Corporations Act. Firstly, the decision in Poplar Assessment Committee 's case was based on the peculiar law of rating in England which is fundamentally different from that accepted under the Calcutta Municipal Act. While the English law of rating taxes the beneficial occupation of property and the value of occupation to the tenant is the criterion for fixing the rateable value, the standard adopted by the Calcutta Municipal Act in fixing the rental value was the value of the property to the owner which would be measured by the rent which the owner could reasonably expect to get from a hypothetical tenant. The basis of taxation under the Calcutta Municipal Act was thus entirely different from that under the English Law. Secondly, payment of rent in excess of the statutory rent in England is unenforceable but not unlawful while under the Calcutta Rent Control Act, it was both unenforceable and unlawful. On these two grounds the Supreme Court distinguished the decision in Poplar Assessment Committee 's case and held that it was inapplicable in the determination of the question before them. The Supreme Court then referred to the decisions

of the Bombay High' Court and the Madras High Court (the Bombay decision being the same as that to which we have already referred) which had followed the majority judgment in Poplar Assessment Committee 's case and the decisions of the Rangoon High Court and the Calcutta High Court which had distinguished it and said : "We would prefer to accept the view expressed by the Calcutta and Rangoon High Courts". This decision of the Supreme Court clearly laid down that the restriction of standard rent under the rent control legislation must be taken into account in determining the annual letting value for the purpose of rating.

[18] The respondents however, made a valiant attempt to distinguish the decision of the Supreme Court in Sm. Padma Debt's case by contend ing that decision was based on the peculiar provisions of the Calcutta Rent Control Act which made it penal for a landlord to receive rent in excess of the standard rent and it could have no application to a case like the present where the rent control legislation did not impose any penal sanction against receipt of rent in excess of standard rent. This contention is, for reasons which we have already indicated, without substance In the first place it is not correct to say that the decision of the Supreme Court proceeded on the ground that the receipt of a higher rent than the standard rent was penal under the Calcutta Rent Control Act. The main ground on which the decision of the Supreme Court rested was that the minority view of Lord Carson was correct and the majority view was wrong and a landlord could not reasonably expect to get higher rent than the standard rent, if it was not de jure recoverable or enforceable by reason of the Rent Control legislation. It was only in the alternative that the Supreme Court proceeded to distinguish the majority judgment in Poplar Assessment Committee 's case and that was on two grounds. The first ground is common to the present case. The basis of taxation under the Corporations Act is the same as that under the Calcutta Municipal Act. So far as the second ground is concerned, what the Supreme Court emphasized was that under the Calcutta Rent Control Act, a contract to pay a higher rent was not only unenforceable but was also unlawful and it was to support this plea of unlawfulness, that the Supreme Court relied upon the fact that receipt of a higher rent was penal under the Calcutta Rent Control Act. The ratio of the decision was not that because receipt of a higher rent is penal that it would be unreasonable for a landlord to expect a higher rent but because receipt of a higher rent is prohibited by law and as unlawful that a landlord cannot reasonably expect a higher rent the penal nature of the provision was relied upon only for the purpose of showing that receipt of a higher rent was prohibited by law and was

unlawful. Now it is true that there is no provision in the Rent Act similar to that in the Calcutta Rent Control Act which makes it penal for a landlord to receive rent in excess of the standard rent but sec. 7 in so many terms prohibits receipt of rent in excess of the standard rent and declares that it shall be unlawful. Therefore, there is no real difference between Sm. Padma Debt's case and the case before us and it is not possible to distinguish the decision of the Supreme Court in Sm. Padma Debt's case. Moreover, as pointed out above, the Supreme Court, after referring to the Bombay and Madras decisions which had followed the majority judgment in Poplar Assessment Committee 's case and the Rangoon and Calcutta decisions which had refused to follow it, expressed its preference for the Rangoon and Calcutta decisions and thus disapproved of the view taken in the Bombay and Madras decisions. It is, therefore, clear that the decision of the Supreme Court in 5m. Padma Debt's case is applicable to cases arising under the Corporations Act and in determining the annual rental value under the Corporations Act, the standard rent prescribed under the Rent Act cannot be ignored : the annual letting value must be limited to the standard rent. That would clearly be the effect of the definitions as they prevailed prior to 3rd December 1969.

[19] Now this would undoubtedly be true if the standard rent were fixed by the Court under the Rent Act. But what would be the position if the standard rent is not fixed ? The answer is provided by the decision of the Supreme Court in The Guntur Municipal Council v. The G. T R. P. Association, (1970) 2 S.C.C. 803. That was a case in which assessments to property tax made by the Guntur Municipality were challenged on the ground that the rental values of lands and buildings were fixed by the Guntur Municipality Without regard to the provisions for determination of fair or standard rent contained in the Rent Control Act. The challenge was clearly supported by the decision of the Supreme Court in Sm. Padma Debt's case but this decision was sought to be distinguished on the ground that sec. 7 of the Rent Control Act made it clear that it is only after fixation of the fair rent of a building that the landlord is debarred from claiming or receiving payment of any amount in excess of such fair rent and therefore, so long as the fair rent of a building is not fixed, the assessment or valuation by the Municipality need not be limited or governed by the measure provided by the provisions of the Rent Control Act for determination of fair rent. The Supreme Court, however, rejected this contention which sought to make a distinction between a case where fair or standard rent is fixed by the Court and a case where it is not and observed :

> "We are unable to agree that on the language of sec. 82(2) of the Municipalities Act any distinction can be made between buildings the fair rent

of which has been actually fixed by the Controller and those in respect of which no such rent has been fixed. It is perfectly clear that the landlord cannot lawfully expect to get more rent than the fair rent which is payable in accordance with the principles laid down in the Act. The assessment of valuation must take into account the measure of fair rent as determinable under the Act. It may be that where the Controller has not fixed the fair rent the municipal authorities will have to arrive at their own figure of fair rent but that can be done without any difficulty by keeping in view the principles laid down in sec. 4 of the Act for determination of fair rent.

It would, therefore, be seen that it would make no difference in the determination of annual letting value under the Corporations Act, whether the standard rent of the property is fixed by the Court under the Rent Act or not. If the standard rent of the property is fixed by the Court, the Commissioner would be bound by it and he would have no power to fix the annual letting value of the property at a higher figure than the standard rent fixed by the Court. But even if the standard rent of the property is not fixed by the Court, the Commissioner would be bound to take into account the restrictive provisions of the Rent Act and determine the annual letting value keeping in view the principles laid down in the Rent Act for fixation of standard rent. The determination of the annual letting value mast be in the light of the principles laid down in the Rent Act for fixation of standard rent and this would be so, irrespective whether the property is actually let out or not.

[20] This immediately raises the question: what are the principles laid down in the Rent Act for fixation of standard rent. If we turn to the provisions of the Rent Act in regard to fixation of standard rent, it will be apparent that these provisions proceed on the principle that the landlord should not be allowed the benefit of unearned increment in the value of his property. Sec. 5 sub-sec. (10) of the Rent Act which gives the definition of standard rent pegs down the standard rent to a particular fixed date, namely, 1st September 1940. Clause (b)(i) of that sub-section provides that the standard rent shall be the rent at which the premises were let on 1st September 1940 and where the premises were not let on the first day of September 1940, clause (b)(ii) says that the rent at which they were last let before that date shall be the standard rent. The case where the premises are first let after 1st September 1940 is dealt with in clause (b)(iii)

and that clause provides that in such a case the standard rent shall be the rent at which the premises were first let, but if the rent at which the premises were so let is in the opinion of the Court excessive, the Court is given power under sec. 11 to fix the standard rent. Sec. 11 also sets out other contingencies in which the Court has power to fix the standard rent. But in all these cases when the Court sets under sec. 11, the Court is required to fix the standard rent at such an amount as, having regard to the provision's of the Rent Act and the circumstances of the case, the Court deems just. But on what principles would the Court act in fixing the standard rent under sec. 11 ? If the premises were let on 1st September 1940, the rent at which they were let on that day would be the standard rent. Then should it make any difference to the fixation of standard rent if the premises were not let on 1st September 1940 but were self-occupied ? Obviously not. The Court must in fixing the standard rent in such a case take into account the fact that the Legislature has pegged down the standard rent to 1st September 1940 and determine the standard rent at such amount as will give to the landlord reasonable return on the actual cost of construction plus the market value of the land on the date of construction together with cost of additions and improvements, if any. Even where the property is constructed for the first time after 1st September 1940, the Court would have to fix the standard rent on the basis of giving the landlord reasonable return on the actual cost of construction plus the market value of the land on 1st September 1940 together with interest thereon from that date upto the date of construction by way of return on idle investment and cost of additions and improvements, if any, since the date of construction. These principles were clearly laid down as far back as 4th August 1958 by Chagla C.J. in Civil Revision Applications Nos. 1366 to 1372 of 1957 and since then, they have always governed the determination of standard rent in cases arising under the Rent Act. It would, therefore, be seen that the standard rent of property which is not recently constructed would always be less-and in case of old properties, it would be very much less-than what it would be in a free market without the restrictions of the Rent Act. There has been such an unprecedented increase in the value of properties owing to the phenomenal rise in the cost of construction since the last world war and there is so much shortage of housing accommodation in cities like Ahmedabad that free market rent unrestricted by the provisions of the Rent Act would always be considerably higher than the standard rent which is fixed having regard to the principle that the landlord should be denied the benefit of unearned increment in the value of his property.

[21] It will be seen from the aforesaid discussion that the annual letting value, according to the definition which operated upto 3rd December 1969, was limited by the measure of

standard rent provided under the Rent Act. But sec. 2(54) as substituted by Gujarat Ordinance 6 of 1969 on 3rd December 1969 with retrospective effect and when Gujarat Ordinance 6 of 1969 was replaced by Gujarat Act 5 of 1970, the identical provision reenacted in sec. 2(1 A) clause (i) with retrospective effect, made a radical departure from this classical concept of annual letting value. The new definition introduced an additional hypothesis in the concept of annual letting value by providing that the rent which a landlord can reasonably expect to get from a hypothetical tenant shall be determined on the basis that the Rent Act is not in force. The result is that under the new definition the land or building is to be valued not at the rent which a tenant would pay having regard to the provisions of the Rent Act but at the rent which a landlord would get in the free market if the Rent Act were not in force. The new definition thus ignores the hard realities of the situation and for the purpose of rating, empowers the Commissioner to value the land or building at an amount which no landlord can reasonably expect to get from a hypothetical tenant in view of the provisions of the Rent Act. That makes the whole concept of annual letting value highly artificial and unreal.

[22] Now the argument of the petitioners was that the new definition of annual letting value which is to be found in sec. 2(1A) clause (i) was first introduced in the Corporations Act on 3rd December 1969 and, therefore, if any assessment for the period prior to 1st April 1970 is pending either before the commissioner or in appeal before the Chief Judge on 3rd December 1969, it would be completed on the basis of the new definition, for the Commissioner, if the assessment is pending before him and the Chief Judge if the assessment is pending in appeal, would be bound to take into account the new definition in completing the assessment. But if any assessment prior to 1st April 1970 has been finally completed before 3rd December 1969, it would be on the basis of the old definition which then prevailed and the new definition, though retrospective, would have no impact on such assessment, since there is no machinery provided in the Corporations Act for reopening such assessment, even if it is found by reason of retrospective introduction of the new definition that such assessment made on the basis of the old definition was erroneous. The result is that the new definition, though theoretically on its plain terms, applicable uniformly to all assessments of lands and buildings for the period prior to 1st April 1970 is, in its operation and effect, confined only to those assessments which are not finally completed before 3rd December 1969. It thus discriminates between property owners whose assessments are finally completed before 3rd December 1969 and property owners whose assessments are not yet finally completed on that date. Two different laws are applied in assessment for the same official year prior to 1st April 1970 according as the assessment is finally

completed before 3rd December 1969 or after it. This discrimination, contended the petitioners, is arbitrary and irrational and does not bear just and reasonable relation to the object sought to be achieved by the taxing provisions and the new definition in sec. 2(1A) clause (i) is, therefore, violative of Article 14 of the Constitution.

[23] The first answer given by the respondents to this contention was that whatever be the position in regard to the earlier official years, there was no discrimination so far at least as the official year 1969-70 was concerned. Even if any assessment for the official year 1969-70 was finally completed before 3rd December 1969, the Commissioner could always reopen the assessment under clause (d) of Rule 20(1) of the Taxation Rules for the purpose of giving effect to the new definition and thus all assessments for the official year 1969-70, whether finally completed before 3rd December 1969 or not, would be on the basis of the new definition. This answer made on behalf of the respondents is fully justified and must be sustained. Rule 20(1) clause (d) provides that subject to the requirement of giving special notice, the Commissioner may upon the representation of any person concerned or upon any other information at any time during, the official year to which the Assessment Book relates, amend the same by altering the assessment of any land or building or premises which has been erroneously valued or assessed through fraud, accident or mistake. Now if any assessment for the official year 1969-70 has been finally completed before 3rd December 1969, it would necessarily be on the basis of the old definition and the effect of the retrospective introduction of the new definition on the assessment would be that it would be rendered erroneous. The assessment would be vitiated by a mistake apparent from the record because it would be in disregard of the new definition which by reason of retrospects operation must be deemed to have been in force during the material period. Vide Venkatachalay v. Bombay Dyeing and Manufacruring Co. Ltd., 34 I.T.R. 143. Moreover, retrospective substitution of the old definition by the new would constitute information to the Commissioner that an erroneous assessment has been made through mistake. It is now well-settled in Income-tax law that to attract the applicability of clause (b) of sec. 34(1) of the old Income-tax Act and clause (b) of sec. 147 of the new Income-tax Act, it is not necessary that information should be as to a fact. It may even be as the State of the law. Vide Maharajkumar Kamal Singh v. Commissioner of Income Tax, 35 I.T.R. 1. The same meaning must apply in the construction of a scheme of fiscal legislation. If the old definition s replaced by the new definition with retrospective effect, it would be inform on to he Commissioner that the State of the law was not what he supposed it to be, namely, that contained in the old definition but it was different that contained in the new definition, and the assessment we erroneously made through mistake. The

Commissioner would circumstances be entitled under Rule 20(1) clause (d) to alter the by redetermining the annual letting value on the basis circumstances be entitled under Rule 20(1) clause (d) to alter the ment by redetermining the annual letting value on the basis of the new definition. The new definition would, therefore, govern all assessments for the official year 1969-70 including assessments 3rd December 1969 and it is not possible to say that the introduction of new definition with retrospective effect makes far as the assessment for the official year 1969-70 is concerned the to the constitutional validity of the new definition in sec. 2(1-A) clause (i) must, therefore, fail in so far as its applicability to the official year 1969-70 is concerned.

[24] So far as the earlier official years are concerned a contents in the nature of a preliminary objection was raised on behalf of the respondents. The respondents submitted that there was no factualment made in any of the petitions that the assessments which were finally completed before 3rd December 1969 were made having regard to the rent restriction provisions of the Bombay Rent Act and in the absence of such averment, no case of discrimination could be said to have been made out by the petitioners and the challenge to the constitutionality of the definition must fail in limine. This submission is, in our opinion wholly without substance. It is clear from what we have stated above that h assessments which were finally completed before 3rd December 1969 made on the basis of the old definition and, therefore unless it is shown to the contrary by the respondents, it would be reasonable to presume that the assessments were made keeping in view the rent restriction provisions of the Bombay Rent Act as required by the old definition. It would be unnecessary for the petitioners to aver that the assessments were made having regard to the rent restriction provisions of the Bombay Rent Act because it would be a normal presumption to make that the Commissioner must have acted in accordance with the requirements of the statute If it is the case of the respondents that the Commissioner acted contrary to the mandate of the law and ignored the rent restriction provisions of the Bombay Rent Act in making the assessments, though he was required by law to take them into account, it would be for the respondents to aver and prove that case. Now it is true-and we have already adverted to it earlier-that so far as the English law of rating is concerned, the view taken by the House of Lords in Poplar Assessment Committee 's case (supra) was that the restriction of standard rent under the relevant rent restriction legislation has no relevance in determining the annual rental value and this view taken by the House of Lords in the context of the peculiar law of rating in England was followed by the Bombay High Court in a case arising under the City of Bombay Municipal Act, 1888, and decided in 1950, namely, Gulam Ahmad Rogay v. Bombay Municipality (supra) and, therefore, it

is quite possible as the respondents contend, that the Commissioner while determining the annual letting value under the provisions of the Corporations Act gave effect to this view and ignored the rent restriction provisions of the Bombay Rent Act from 1950 onwards. But we find it difficult to believe-at any rate we cannot presume that even after the decision in Padma Debt's case was given by the Supreme Court expounding the correct legal position and disapproving the Bombay decision in Gulam Ahmad Rogay v. Bombay Municipality (supra), the Commissioner still continued to assess the annual letting value on the basis of the old interpretation which was found to be erroneous by the Supreme Court. If the Commissioner in fact continued to do so, we should have expected a positive averment to that effect by the respondents in clear and unambiguous terms. But even though a fairly lengthy affidavit-in-reply has been filed on behalf of the respondents, we do not find any averment by the respondents-at least none could be pointed out to us-that in assessments finally completed before 3rd December 1969, the annual letting value was determined by the assessing authority on the basis of free market in rent, uninhibited by the rent restriction provisions of the Bombay Rent Act. It is, therefore, clear that we must proceed to decide the controversy between the parties on the footing that the assessments which were finally completed before 3rd December 1969 were made keeping in view the restriction of standard rent under the Bombay Rent Act, at any rate after the decision of the Supreme Court in Padma Debt's case.

[25] Now the new definition of 'annual letting value' in sec. 2(1A) clause (i) on its face applies equally to all assessments of lands and buildings for the period prior to 1st April 1970, but, in its operation and effect, it is confined only to those assessments which are not completed on or before 3rd December 1969. If any assessment has been finally completed before 3rd December 1969, it would obviously be on the basis of the old definition because at that time the new definition had not come into force with retrospective effect and the new definition would have no impact on such assessments though made retrospective in so many terms. The reason is that, as pointed out by this Court in its decision dated 27th October 1969, on a proper construction of the relevant provisions of the Corporations Act and the Taxation Rules, the procedure for assessment of property tax for any particular official year must be completed before the expiry of that official year, except in cases falling within Rule 2IB, and once an assessment is made before the expiration of the official year, it cannot be revised or changed after the close of the official year unless it is altered as a result of a decision in an appeal preferred under sec. 406. Neither the Corporations Act nor the Taxation Rules provide any machinery for reopening an assessment after the expiry of the official

year even though such assessment may be found to be erroneous. Rule 20(1) clause (b) undoubtedly confers powers on the Commissioner to revise or alter an assessment which is found to be erroneous but that power can be exercised only during the currency of the official year. Once the official year has ended, there is no power in the Commissioner to revise or change an assessment, howsoever erroneous it may be discovered to be, except in consequence of a decision in an appeal under sec. 406. The assessments finally completed before 3rd December 1969 on the basis of the old definition cannot therefore, be reopened by the Commissioner, for the purpose of giving effect to the new definition except for the official year 1969-70. The new definition thus affects only those assessments which are not completely finalised before 3rd December 1969. They would comprise assessments which are pending in appeal under sec. 406 as also assessments which are or may be initiated under sec. 152A. The respondents contended that no plea of discrimination could be permitted to be raised by the petitioners with reference to assessments commenced or to be commenced under sec. 152A because there was no averment to that effect made in any of the petitions. If the petitioners had raised a specific plea of discrimination with reference to such assessments, the respondents could have dealt with such plea on a factual basis and shown that there was no discrimination. This opportunity, contended the respondents, was denied to them, because of absence of necessary averment in the petitions. This grievance of the respondents is, in our opinion, wholly unjustified. We find it is clearly averred in the petitions that the new definition discriminates unjustly between property owners whose assessments were finally completed on or before 3rd December 1969 and property owners whose assessments were not so completed. It is no doubt true that the petitioners have not set out in the petitions what kinds of cases would fall within the latter class but that is a matter of detail which may not be set out in the petitions. It would be sufficient to state what is the classification made by the new definition and how it is arbitrary and irrational. Which kinds of cases fall within one class or another need not be elaborated in the petitions: that would be a matter for argument. Moreover, in the present case, it was well-known to the respondents that proceedings for assessment of lands and buildings of textile mills and factories for the official years 1964-65, 1965-66 and 1966-67 were pending under sec. 152A and these assessments were not finally completed before 3rd December 1969. The respondents could have, therefore, dealt with these cases on a factual basis, if they wanted to do so. But possibly they had nothing to say beyond what they actually did in the affidavit-in-reply. The respondents could have even filed a supplemental affidavit-in-reply if they had something to add, but they deliberately and advisedly did not do so. As a matter of fact assessments for the official years 1964-65, 1965-66 and 1966-67 pending under sec. 152A stand on the

same footing as assessments for the other official years pending in appeal under sec. 406 and, so far as the latter class of assessments is concerned, it was not the case of the respondents that they did not have an opportunity of dealing with it on a factual basis. It is, therefore, evident that so far as the official years upto and inclusive of 1968-69 are concerned, the new definition in its actual operation and effect has no applicability to assessments which were finally completed before 3rd December 1969 : it applies only to assessments which were pending in appeal under sec. 406 and assessments which were pending under sec. 152A.

[26] Thus the effect of the enactment of the new definition in sec. 2 (1A) clause (i) with retrospective effect without providing any machinery for reopening the assessments already closed prior to 3rd December 1969 is that two different laws are applied in determination of the annual letting value for the same official year. The assessments which have been finalised before 3rd December 1969 are governed by the old definition which requires the Commissioner to take into account the standard rent prescribed under the Bombay Rent Act while the assessments which are not finally completed before that date and are pending either under sec. 406 or sec. 152A would be governed by the new definition which obliges the Commissioner to ignore the restriction of standard rent provided under the Bombay Rent Act. There would be one measure of annual letting value for assessments finally completed before 3rd December 1969 and another, for assessments pending on that date, though the official year for which assessments are made in both cases may be the same. That is clearly impermissible under the equality clause of the Constitution. Of course, when we say this we do not wish to suggest that in the matter of imposition of tax for an official year, there can be no differentiation between classes of lands and buildings and different laws cannot be applied to them. The equality clause of the Constitution does not insist that the same law should be applied in the assessment of all lands and buildings irrespective of differences amongst them. What it requires is only this, namely, that equals shall not be treated unequally and vice versa. If there are differences amongst lands and buildings which are relevant to the object of the taxing legislation, the Legislature is free to recognise them and enact different statutory provisions for different classes of lands and buildings. There are two tests which have been evolved by judicial decisions and both must be satisfied in order that a classification made by a statutory provision may be sustained as valid. The first test is that the classification must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group and the second test is, that the differentia in question must have a reasonable relation to the object sought to be achieved by the statutory provision, or, in other words,

there must be some rational nexus between the basis of the classification and the object intended to be achieved by the statute. The question is, whether these two tests are satisfied in the present case. Now, here the applicability of the more onerous provision contained in the new definition is made dependent on the fortuitous circumstance that the assessment has not been finally completed and is pending on 3rd December 1969. The new definition metes out differential treatment in respect of pending assessments by applying a different measure of annual letting value which may lead to imposition of greater tax burden. That is wholly irrational and unjust. We fail to see any conceivable reason which can justify a differential treatment being meted out to a property-owner in the matter of imposition of tax merely because, by a fortuitous accident, his assessment has not been finally completed before 3rd December 1969 and is pending on that date. How can the pendency of an assessment have any relation to the measure of tax ? How can there be, in respect of the same official year, different measures of tax dependent upon whether assessment is finally completed before a certain date or not ? That would be wholly arbitrary and irrational having no reasonable relation to the object of the taxing statute. Such differential treatment would be without any rational basis.

[27] But, contended the respondents, there is a decision of the Supreme Court which lays down that pending proceedings can be treated as a separate class by themselves and differential treatment can be accorded to them without transgressing the equality clause of the Constitution. That is the decision in Jain Brothers v. Union of India, A.I.R. 1970 S.C. 778. We have carefully gone through this decision but we do not think it assists the contention of the respondents. It does not lay down any' broad proposition that, in all circumstances and situations, pending proceedings can be treated as a class for giving differential treatment irrespective of the nature of the proceeding. There the question was whether sec. 297(2)(g) of the Income Tax Act, 1961, was a valid piece of legislation. The Income Tax Act 1961 came into force on 1st April 1972 and it repealed the Indian Income Tax Act, 1922. Sec. 297(2)(g) enacted a saving provision which provided that any proceeding for imposition of penalty in respect of an assessment for the year ending 31st March 1962 or any earlier year, which is completed on or after 1st April 1962 may be initiated and any such penalty may be imposed under the Act of 1961. The constitutional validity of this provision was challenged on the ground that it classifies for imposition of penalty, assesses into two groups with reference to a particular date, namely, completion of assessment proceedings on or after 1st April 1962 and this classification is arbitrary and irrational and hence violative of Article 14 of the Constitution. This challenge was negatived by the Supreme Court and the constitutional validity of sec. 297(2)(g) was upheld. The Supreme Court while repelling

the challenge made the following observation which was strongly relied upon on behalf of the respondents :-

> "It is not disputed and no reason has been suggested why pending proceedings cannot be treated by the Legislature as a class for the purpose of Article 14."

This observation read divorced from its context might seem to suggest that, whatever be the nature of the proceeding, pending proceedings can always be treated by the Legislature as a class and differential treatment given to them would not invite the inhibition of Article 14. But that is not correct. The observation made by the Supreme Court must be read in the context in which it is made. It is clear from paragraphs 10 and 12 of the judgment that when the Supreme Court made the above observation, the Supreme Court did not intend to lay down any absolute proposition that pending proceedings can always be treated as a class for the purpose of Article 14, regardless of the nature of the proceedings. The Supreme Court, after making the above observation, proceeded to add in paragraph, 10 of the judgment: "According to the arguments on behalf of the appellants Article 14 is attracted because the classification which has been made is purely arbitrary depending on the accident of the date of the completion of the assessment. There can be no manner of doubt that penalty has to be calculated and imposed according to the tax assessed. It follows that imposition of penalty can take place only after assessment has been completed. For this reason there was every justification for providing in clauses (f) and (g) that the date of the completion of the assessment would be determinative of the enactment under which the proceedings for penalty were to be held" and then again in paragraph 12 of the judgment the Supreme Court observed : "It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the income-tax authorities that a default has been committed by the assessee which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of Secs. 274(1) and 275 of the Act of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty is the date of such completion". This discussion in paragraphs 10 and 12 of the

judgment would have been wholly unnecessary, if the challenge based on Article 14 was intended to be repelled by the Supreme Court by merely stating that pending proceedings can be treated as a class for the purpose of application of a different law. But the Supreme Court took care to point out-and this was reiterated by the Supreme Court at two places-that the date of completion of the assessment was the crucial date for purposes of penalty and there was, therefore, every justification for providing that "the date of completion of the assessment would be determinative of the enactment under which the proceedings for penalty were to be held". This was the true ratio of the decision of the Supreme Court and it is this ratio which we must apply in order to determine whether the present case is covered by the Supreme Court decision. Here in the case before us, it is not the date of completion of the assessment which is the crucial date. It is the official year which is important, because the pending proceedings are for assessment and levy of tax and tax is levied with reference to each official year. The application of a different law to pending proceedings cannot, therefore, be justified on the strength of this decision. On the contrary, this decision, if properly applied, would problem to indicate that pending proceedings for assessment and levy of tax should be governed by the same law by which assessments already completed were determined. The law applicable during the relevant official year should govern both assessments. This decision of the Supreme Court, therefore, far from helping the respondents, actually goes against their contention.

[28] But even if we read this decision of the Supreme Court as laying down that pending proceedings may be governed by the law in force at the date of completion of the assessment, the respondents must yet fail. The definition in sec. 2(1 A) clause (i) which is applied to pending proceedings lays down what shall be the annual letting value in relation to the period prior to 1st April 1970. The definition of "annual letting value" in relation to the period subsequent to 1st April 1970 is to be found in sec. 2(1A) clause (ii) and that is entirely different from the definition in sec. 2(1A) clause (i). The definition in sec. 2(1A) clause (ii) applies to all future assessments for the period subsequent to 1st April 1970 but pending assessments though completed after 1st April 1970 are governed by the definition in sec. 2(1 A) clause (i). Thus two different laws are applied even if we take the date of completion of the assessment as the material date. The pending proceedings are not governed by the law applicable in relation to the period

subsequent to 1st April 1970 but are governed by an entirely different law, namely, that contained in sec. 2(1A) clause (i). It is as if the definition in sec. 2(1A) clause (i) has been specially enacted for pending assessments. The pending assessments are neither governed by the law by which the assessments already finalised before 3rd December 1969 were determined nor are they governed by the law which is applicable to future assessments. They are singled out for hostile and discriminatory treatment and differentiated not only from assessments finalised in the past but also from assessments to be finalised in the future. This differentiation is wholly arbitrary and unprecedented and there is no rational justification for it. It is, therefore, clear that, from whichever angle we may look at the problem, either by taking the assessment year as the material period or by taking the date of completion of the assessment as the material date, for uniform application of the law, the definition in sec. 2(1A) clause (i) in its operation and effect makes unjust discrimination and consequently, it must be held that it falls foul of Article 14 of the Constitution.

[29] The respondents tried to save the validity of sec. 2(1A) clause (i) by putting forward an argument that the only assessments which were pending on 3rd December 1969 were those of textile mills and factories included in the Special Property Section and in respect of the properties of these textile mills and factories, a situation had arisen under which, if the old definition of annual letting value were to be applied, such properties would totally escape liability to tax, because in view of the peculiar character of such properties, namely, that they are never or seldom let, there were no data of actual or comparable rents nor was there any other appropriate method for determining the annual rental value on the basis of applicability of the Supreme Court decision in Padma Debt's case and, therefore, the Legislature was justified in treating such properties as a separate class and enacting a special definition in sec. 2(1A) clause (i) for assessment of annual rental value of such properties. But this argument is equally futile. In the first place, there is no averment in the affidavit-in-reply filed on behalf of the respondents-at any rate none could be pointed out to us on behalf of the respondents-that the only assessments which were pending on 3rd December 1969 were those of textile mills and factories included in the Special Property Section. It is no doubt true that the assessments which were pending under sec. 152A were those of textile mills and factories included in the Special Property Section but the same could not be said of the assessments pending in appeal under sec. 406. There is nothing to show, and it is also not probable, that appeals pending under sec. 406 related only to assessments of textile mills and factories included in the Special Property Section. It is difficult to believe that, if not for other official years, at least for the immediately preceding official year 1968-69,

no appeals were filed by any owners of properties other than textile mills and factories: If appeals were filed, as indeed they must have been, a few of them at least must be pending on 3rd December 1969 as it is well-known that there is a lot of congestion of work in the Small Causes Court at Ahmedabad and cases do take a little time to be disposed of. The respondents, however, relied on a statement made by the petitioners in Special Civil Application No. 233 of 1970 in paragraph 26(b) to the following effect :

> "It is pertinent to note that the determination of rateable values of almost all assesses except mills and factories have been already determined on the basis of the old provisions of the B.P.M.C. Act 1949. It is only mills and factories who are victimised by the impugned provisions of the Ordinance."

This statement read torn from its context might seem to suggest that according to the petitioners themselves, the only assessments which were pending on 3rd December 1969 were those of textile mills and factories but that would not be a correct reading of this statement. The context makes it clear that this statement was made in reference to assessment for the official year 1969-70 and what the petitioners meant to say was that the rateable value of almost all assesses except textile mills and factories for the official year 1969-70 was already determined on the basis of the old definition before the Ordinance was promulgated on 3rd December 1969 and the life of the Ordinance was limited only upto 2nd April 1970 and it was, therefore, obvious that the Ordinance was promulgated only for the purpose of hitting the textile mills and factories whose complaints in regard to the official year 1969-70 were pending on 3rd December 1969 and would be heard and disposed of before 2nd April 1970. It would not be right to read this statement divorced from its context, as if it contained an admission on the part of the petitioners that the assessments of all assesses, excluding textile mills and factories, for the official years prior to 1969-70 were determined on the basis of the old definition and such determination had become final. That would be reading much more in the statement than what its context justifies. If the case of (he respondents were that the only assessments which were pending on 3rd December 1969 were those of textile mills and factories, we should have expected a positive statement to that effect in an otherwise lengthy affidavit-in-reply. The respondents cannot rely on a stray statement made in one of the petitions in a wholly different context for the purpose of

founding an argument,

[30] But even if it be assumed that the only assessments pending on 3rd December 1969 were those of textile mills and factories and the definition in sec. 2(1A) clause (i) applied only to those assessments, the argument of the respondents must yet fail. It is not possible to say that textile mills and factories formed a distinct class to which the definition in sec. 2(1A) clause (i) could be legitimately applied without violating the equality clause of the Constitution. The only ground on which the respondents sought to justify differential treatment to textile mills and factories was that if the old definition of annual letting value were to be applied, they would totally escape liability to tax and hence it was necessary to provide a different measure of annual letting value for them by enacting sec. 2(1A) clause (i). We do not think this ground can be sustained: it is wholly unjustified. It may be noted that in both cases, whether the old definition applies or the new-and when we speak of the new definition, we mean the definition contained in sec. 2(1 A) clause (i)-the basis of taxation is the same, namely, the rent at which the property may reasonably be expected to be let or, in other words, the rental value of the property. What is sought to be taxed is the value of the property to the owner and in both cases, that is measured by the rent which the owner of the property may reasonably expect to get from a hypothetical tenant. The only difference is that whereas the old definition required the Commissioner to take into account that rent restriction provisions of the Bombay Rent Act, the new definition expressly enjoins him to ignore them. Now so long as the basis of taxation is the rent from a hypothetical tenant or, in other words, the rental value, it is difficult to see how differentiation could be made between textile mills and factories on the one hand and the remaining properties on the other. We could have appreciated if textile mills and factories had been treated as a separate class for according differential treatment on the ground that the properties of textile mills and factories are never or seldom let and their real value to the owner lies not in their rent-fetching capacity but in their utility as part of the manufacturing apparatus. The Legislature could have legitimately provided in case of textile mills and factories that they shall not be assessed on the basis of their rental value, for that would not be a proper measure of their value to the owner, but they shall be assessed on a different basis. That would have been a permissible differentiation having a just and rational relation to the object of the taxing provision, which is to tax the value of the property to the owner. But we fail to see how valid differentiation can be made between textile mills and factories on the one hand and the remaining properties on the other when the basis of taxation is the same, namely, the rental value or rent-fetching

capacity. Then, it cannot be provided that in one case, the dental value shall be determined by taking into account the restriction of standard rent under the Bombay Rent Act and in the other, the restriction of standard rent shall be ignored in determining the rental value. There would be no rational justification for making this differentiation. We do not agree that if the rental value were to be determined on the basis of the rent restriction provisions of the Bombay Rent Act, the textile mills and factories would totally escape liability to tax. Even if date of actual or comparable rent are not available because the properties are of a class which are never or seldom let, that would not present any difficulty in ascertaining the rental value keeping in view the restriction of standard rent prescribed under the Bombay Rent Act. We have already discussed and pointed out the principles laid down by judicial decisions for determining standard rent of premises under the Bombay Rent Act and we need not repeat what we have said earlier in this connection. It is sufficient to state that it is possible in accordance with these principles to determine the standard rent of the properties of the textile mills and factories. It is neither an impossible nor a difficult exercise. The principles are well-settled and all that has to be done is to apply them to the given facts. It is, therefore, not possible to accept the thesis of the respondents that if the rental value were to be determined according to the old definition which requires the assessing authority to take into account the rent restriction provisions of the Bombay Rent Act, the textile mills and factories would totally escape liability to tax. It is no doubt true that they would escape with a light burden of tax but that would be so with all properties. It is equally true that in all probability the Contractor's method for ascertaining the rental value would not be applicable in cases governed by the old definition, because valuation based on Contractor's method takes into account the unearned increment in the value of the property while the old definition requires the assessing authority to ignore it, but merely because the applicability of the Contractor's method may be excluded, it does not mean that the rental value of the properties of the textile mills and factories cannot be determined. We are, therefore, of the view that the textile mills and factories could not be differentiated from other properties for the purpose of applying the new definition in sec. 2(1 A) clause (i) and the new definition discriminates unjustly against them.

[31] Having failed in these attempts to sustain the validity of the new definition in sec. 2(1A) clause (i), the respondents made one last effort and that was based on sec. 139A which was introduced with retrospective effect by sec. 8 of Gujarat Act 5 of 1970. Sub-Secs. (1) and (3) of sec. 139A provided inter alia as follows :-

"139. A. (1) If any building or land or premises assessed to any property tax

arc let, and their rateable value exceeds the amount of rent payable in respect thereof to the person from whom, under the provisions of sec. 139, the said tax is leviable, the said person shall be entitled to receive from his tenant the difference between the amount of the property tax levied from him, and the amount which would be leviable from him if the said tax were calculated on the amount of rent payable to him.

xxx xxx xxx xxx xxx

(B) The provisions of this section shall apply only in relation to the property tax levied for any period prior to 1st April 1970 referred to in sub-clause (i) of clause (1A) of sec. 2."

The argument of the respondents based on these provisions was that it protected property owners whose assessments were pending on 3rd December 1969 against heavier impact of property tax resulting from the retrospective operation: of the new definition in sec. 2(1A) clause (i) and placed them on par with property owners whose assessments were finally completed before 3rd December 1969 and thus saved the new definition in sec. 2(1A) clause (i) from the vice of discrimination. But this argument, plausible though it may seem, is not well-founded. There are no less than three answers to it. In the first place, the vice of discrimination lies in providing two different measures of annual letting value so far as imposition of tax is concerned and this discrimination in imposition of tax is not obliterated by the provision that the property owner who is subjected to the higher burden of tax may recover the amount of difference in tax from someone else. That does not remove the inequality in the burden of tax, because so far as the Corporation is concerned, the liability is that of the property owner and qua the Corporation, one property owner is liable to pay tax on a more onerous basis than the other. The fact that the property owner may be entitled to recover the difference in the amount of the tax from the tenant may to some extent relieve the hardship, but if the tenant is not willing to pay it, the property owner would be compelled to file a suit against the tenant to recover it and such a provision can hardly be regarded as sufficient to cure the discrimination or inequality in the imposition of tax. Secondly, the

property owner, though given a right to recover the amount of difference in tax, may not be able to recover it from the tenant in which event, he would have to bear the burden himself. Lastly, the provision in sec. 139A would be applicable only in case of tenanted properties and so far as self-occupied properties are concerned and properties of textile mills and factories would in most cases be self-occupied properties-the owners would not be entitled to pass on the burden of higher tax to anyone else and they would have to bear it themselves. Sec. 139A does not, therefore, save the new definition in sec. 2(1A) clause (i) from the charge of discrimination. The new definition in sec. 2(1A) clause (i) must, in the circumstances, be held to be violative of Article 14 of the Constitution in so far as it applies to assessments for the official years from the commencement of the Corporations Act upto and including the official year 1968-69 : it is valid in so far as it applies to assessments for the official year 1969-70.

[32] Re : Ground (A)(in) :- This ground of challenge based on infraction of Article 19(1)(f). of the Constitution was argued for some time by the learned counsel appearing on behalf of the petitioners, but when it was pointed out to him that there was no material at all on the basis of which it could be said that the tax levied according to the definition in clause (i) of sec. 2(1A) was unreasonable and excessive, he rightly did not press this ground of challenge and hence it is unnecessary to examine it.

[33] Re: Ground (B)(i) :- This ground of challenge requires serious consideration. To appreciate the arguments which have been advanced before us in regard to this ground of challenge, it is necessary to make a few general observations. It is now well-settled and much authority is not needed to support it, that in taxing statutes, the Courts always permit the Legislature to have a very large degree of freedom in classification. The principle is nowhere better stated than by Willis in his "Constitutional Law" where the learned Author states :

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.....The Supreme Court has been practical and has

permitted a very wide latitude in classification for taxation."

This principle was approved by the Supreme Court in East India Tobacco Co. v. State of Andhra Pradesh (A.I.R. 1962 S.C. 1733) and in F. F. R. Varma v. Union of India, A.I.R. 1969 S.C. 1094 where Shah J., speaking on behalf, of the [Supreme Court elaborated the principle in these words :-

"Equal protection clause of the Constitution does not enjoin equal protection of the laws as abstract propositions. Laws being the expression of legislative will intended to solve specific problems or to achieve definite objectives by specific remedies, absolute equality or uniformity of treatment is impossible of achievement. Again tax laws are aimed at dealing with complex problems of infinite variety necessitating adjustment of several disparate elements. The Courts accordingly admit, subject to adherence to the fundamental principles of the doctrine of equality, a larger play to legislative discretion in the matter of classification. The power to classify may be exercised so as to adjust the system of taxation in all proper and reasonable ways: the Legislature may select persons, properties, transactions and objects, and apply different methods and even rates for tax, if the Legislature does so reasonably. Protection of the equality clause does not predicate a mathematically precise or logically complete or symmetrical classification: it is not a condition of the guarantee of equal protection that all transactions, properties, objects or persons of the same genus must be affected by it or none at all. If the classification is rational, the Legislature's free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different Laws and adopt different modes of assessment. A taxing statute may contravene Article 14 of the Constitution if it seeks to impose on the same class of property, persons, transactions or occupations similarly situate, incidence of taxation, which leads to obvious inequality. A taxing statute is not, therefore, exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects."

There is thus a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the measure of tax. The Court may classify properties for

the purpose of taxation and provide different measures of tax for different classes of properties. That is permissible under the equality clause of the constitution but it is essential that the classification made by the Legislature must not be "arbitrary, Artificial or evasive". If the classification is clearly unreasonably and arbitrary, the Court would intervene and strike down the legislation as being within the inhibition of Article 14. With these prefatory observations, we may now proceed to examine the question of constitutional validity of Proviso (c) to sec. 2(lA)(ii).

[34] Sec. 2(1A) clause (ii) in which Proviso (c) occurs provides that in relation to "any other period", that is, period from and after 1st April 1970, the annual rent for which any building or land or premises might reasonably be expected to be let from year to year with reference to its use shall be the 'annual letting value'. There is also a clause at the end which includes in 'annual letting value' other payments made or agreed to be made to the owner by a person occupying the building or land or premises on account of occupation, taxes, insurance or other charges incidental thereto. Now when we compare clause (ii) of sec. 2(1 A) with clause (i), an important difference immediately becomes noticeable. Whereas clause (i) of sec. 2(1A) requires the assessing authority to determine the hypothetical rent as if the Bombay Rent Act were not in force, clause (ii) of sec. 2(1 A) does not enjoin the assessing authority to ignore the Bombay Rent Act. It omits the words "if the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, were not in force" which occur in clause (i) of sec. 2(1A). The result is that, as laid down in the decision of the Supreme Court in Padma Debt's case the assessing authority determining the hypothetical rent under clause (ii) of sec. 2(1A) is bound to take into account the restriction of standard rent prescribed under the Bombay Rent Act, the annual letting value under clause (ii) sec. 2(1A) cannot exceed the standard rent determinable under the Bombay Rent Act. That was in fact the position which obtained prior to the promulgation of Ordinance 6 of 1969. Now if clause (ii) of sec. 2(1 A) had stood alone, there would have been no difficulty, for it would have applied uniformly in assessment of all lands and buildings. But there are three provisos which carve out exceptions from the main enactment in sec. 2(1A) clause (ii). We are concerned primarily with Proviso (c) which provides that, for the purpose of sub-clause (ii), in the case of any building of a class not ordinarily let, or in the case of any industrial or other premises of a class not ordinarily let, or in the case of a class of such premises the building or buildings in which are not ordinarily let, if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed

to be six per cent of the total of the estimated market value, at the time of the assessment, of the land on which such building or buildings stand or, as the case may be, of the land which is comprised in such premises, and the estimated cost, at the time of the assessment, of erecting the building, or as the case may be, the building or buildings comprised in such premises. The constitutional validity of this Proviso is in question before us.

[35] Proviso (c) picks out for differential treatment buildings which satisfy two conditions : one condition is that the building falls within the description "any building of a class not ordinarily let...any industrial or other premises of a class not ordinarily let, or...a class of such premises the building or buildings in which are not ordinarily let" and the other is that the building is such that "the annual rent thereof cannot in the opinion of the Commissioner be easily estimated". The annual rent of such a building, says Proviso (c), shall be deemed to be six per cent of the total of, the estimated market value, at the time of the assessment, of the land on which the building stands, and the estimated cost, at the time of the assessment, of erecting the building. Thus in respect of buildings covered by Proviso (c), a statutory formula is provided by the Legislature determining the basis of valuation.

[36] The argument of the petitioners was that Proviso (c) says in so many terms that for the purpose of sub-clause (iii) the annual rent, in case of buildings covered by Proviso (c), shall be deemed to be that determined according to the statutory formula and, therefore, it would seem that the statutory formula purports to prescribe a method for determining hypothetical rent for such buildings. There can be no doubt, conceded the petitioners, that, to meet a given situation, where recognised methods fail of application, the Legislature may devise a new method of determining hypothetical rent but such method must be logically relevant and capable of yielding hypothetical rent. Here, contended the petitioners, the method prescribed by the statutory formula is wholly irrelevant and cannot possibly give hypothetical rent in a market controlled by rent restriction legislation. The Legislature has, therefore, clearly provided a different basis of valuation for buildings covered by Proviso (c) and it is a more onerous basis. This differentiation, said the petitioners, is based only on the circumstance that it is not easy in the opinion of the Commissioner to estimate the hypothetical rent of the building. The basis of the differentiation is the ease or difficulty felt by the Commissioner in estimating the hypothetical rent. This basis is not real and substantial and has no rational relation to the object of the taxing provision. It may justify prescription of a different method of finding out the hypothetical rent but it cannot justify introduction of a new method which

can by no chance yield hypothetical rent. If there is difficulty experienced by the Commissioner in estimating the hypothetical rent, the Legislature may give a new method for determining the hypothetical rent but it cannot justify prescription of a statutory formula which is wholly unrelated to the hypothetical rent. The classification made on the basis of difficulty of estimating the hypothetical rent, contended the petitioners, is arbitrary and irrational and cannot be sustained. The petitioners also urged that the condition which forms the basis of classification, namely, that the annual rent of the building cannot in the opinion of the Commissioner be easily estimated, is vague and indefinite inasmuch as the subjective opinion of the Commissioner as regards the case or difficulty in estimating the hypothetical rent is made the sole criterion for the applicability of the statutory formula in Proviso (c). It is quite possible that what may be regarded as easy by one Commissioner may be considered difficult by another depending upon the experience and ability of each in estimating the hypothetical rent. The selection of the class of buildings for application of the statutory formula only on the basis of the subjective difficulty experienced by the Commissioner in estimating the hypothetical rent cannot be regarded as rational. Moreover, added the petitioners, this condition would leave it open to the Commissioner to pick and choose at his own sweet will any property out of the properties described in the opening part of Proviso (c) for differential treatment and that would abet discrimination. The petitioners contended that for these reasons Proviso (c) offends against the guarantee of equal protection of laws contained in Article 14 and is accordingly invalid.

[37] Now it may be pointed out at the outset that the provisions in the Corporations Act in regard to property tax owe their source of legislative power to Entry 49 of List II. Entry 49 of List II contemplates levy of tax on lands or buildings or both as units : tax under this Entry is "directly imposed on lands and buildings and bears a definite relation to it". Vide Sudhir Chandra v. Wealth Tax Officer, AIR. 1969 S.C. 59 : Assistant Commissioner, Madras v. Buckingham and Carnatic Co. Ltd., A.I.R. 1970 S.C. 169. That being so, it is for the Legislature to select which units of lands and/or buildings it would bring to tax. The Legislature may also select its measure of tax. The measure of tax is a product of two components, namely, basis of valuation and rate of tax. The Legislature has choice in regard to both components. The Legislature may fix such rate as it thinks fit provided, of course, tax does not become confiscatory or extortionate. The Legislature may also adopt as the basis of valuation, the annual rental value or the capital value or any other method of valuation which the Legislature may in its wisdom and ingenuity devise. These are matters for the Legislature to decide. Besides, the Legislature need not necessarily provide a uniform measure of tax for all units of lands

and buildings it decides to tax. It can make a rational classification of units of lands and buildings and provide different measures of tax for different classes of units by prescribing different bases of valuation and/ or different rates of tax. So long as there is a rational basis for the classification, the prescription of different bases of valuation or different rates of tax would not be violative of Article 14, even if it results in one class of property units being subjected to a higher burden of tax than the other. It is in the context of this discussion that we must proceed to consider whether the classification made by Proviso (c) for application of the statutory formula is rational and it can meet the challenge of Article 14.

[38] We may first examine the statutory formula prescribed in Proviso (c) and consider whether it is logically relevant to the determination of hypothetical rent as contemplated in sub-clause (ii), that is, hypothetical rent determined having regard to the restrictive provisions of rent control legislation, What this statutory formula requires the Commissioner to do is to estimate the market value, at the time of the assessment, of the land on which the building stands and add to it the estimated cost at the time of assessment, of erecting the building, and take six per cent of the total as the annual letting value for the purpose of applying the rate of tax. This method of valuation, contended the petitioners, does not bear comparison to any well recognised method of determining hypothetical rent and is incapable of yielding the result contemplated by sub-clause (ii), namely, hypothetical rent in a market controlled by rent restriction legislation. It is necessary, in order to appreciate this contention, to notice briefly what are the well recognised methods of determining annual rental value. There are at least four recognised methods of valuation given in the leading text-book on Rating by Farady quoted in paragraph 9 of the judgment of the Supreme Court in New Manek Chowk Spg. and Wvg. Mills Co. Ltd. v. Municipal Corporation, Ahmedabad, A.I.R. 1967 S.C. 1801. One is the competitive or comparative method which may conveniently be described as the method of comparable rents: the another is the profits method: the third is the unit method which is commonly applied to schools, hospitals etc., and the fourth is the Contractor's method. It was common ground between the parties that the method of valuation prescribed in Proviso (c) is wholly different from the method of comparable rents, the profits method arid the unit method and no attempt was made to compare it with any of these three methods. The only question debated before us was as to whether the method of valuation set out in Proviso (c) is comparable .to the Contractor's method. The Contractor's method consists of estimating the "effective capital value" of the premises and applying a rate per cent thereto in order to estimate the rental value. Ryde in the Eleventh Edition of his book on Rating at page 443 points

out that in the modem practice of applying the Contractor's method, it is possible to discern five stages, though the fourth and fifth are not usually recognised as distinct and are often mixed up. He describes the five stages thus:

> The first stage is the estimation of the cost of construction of the building. There is a difference of view as to whether it is better to take the cost of replacing the actual building as it is, or the cost of a substitute building on the same plan as the actual building but otherwise in an up-to-date form.
>
> The second stage is to make deductions from the cost of construction to allow for age, obsolescence and any other factors necessary to arrive at the 'effective capital value'.
>
> The third stage is to estimate the cost of the land. The principle of rebus sic stantibus demands that the land be valued as if limited to its existing use.
>
> The fourth stage is to apply the market rate or rates at which money can be borrowed or invested to the effective capital value of the buildings and the land. The result is what it would cost the occupier, in annual terms, to provide the hereditament for himself, rather than to lease it.
>
> The fifth stage is to consider whether the result of the fourth stage really represents what the hypothetical tenant would pay for an annual tenancy on the statutory terms, and to make any adjustments necessary to ensure that no higher rent is fixed 'as the basis of assessment than that which it is believed the owner would really be willing to pay for the occupation of the premises'.
>
> The argument of the petitioners was that the contractor's method has certain inherent infirmities and it is by its very nature inapt to give the annual rental value in case of old buildings, even if the annual rental value were to be determined ignoring the rent restriction provisions as in England and that is why the fifth stage has been introduced as an essential stage in the method. The fifth stage is nothing but an attempt to save the contractor's method and it seeks to do so by incorporating into the method something which is entirely

extraneous to it. It compels the adherents of the method to look for considerable material outside the frame of reference supplied by the method and the method is thereby robbed of much of its practical usefulness. It was also contended on behalf of the petitioners that the contractor's method in the form in which it is recognised in England cannot be applied in India in areas where rent restriction legislation is in force. The principles governing fixation of standard rent under rent restriction legislation proceed on the basis that the landlord should be deprived of the unearned increment in the value of the building while the contractor's method takes into account the effective capital value of the building at the time of the assessment and the rent obtained by the contractor's method would, therefore, include the component of unearned increment in the value of the building. The contractor's method, contended the petitioners, would therefore be wholly inapplicable and it cannot conceivably yield the annual rental value in case of old buildings. It would in fact be irrelevant for the determination of the annual rental value. The petitioners urged that, in the circumstances, even if the method of valuation laid down in Proviso (c) were nothing else than the contractor's method, it would not give the annual rental value in case of textile mills and factories of the petitioners which admittedly consist of old buildings. This contention raises interesting questions of law but it is not necessary for the purpose of the present petitioners to examine it, since what we are concerned here is to determine, not the applicability of the contractor's method in determining annual hypothetical rent in a market controlled by rent control legislation, but the relevance of the statutory method of valuation provided in Proviso (c) in determining it. It is in our view immaterial to consider whether the method of valuation set out in Proviso (c) is the same as the contractor's method or it differs from the contractor's method in any material respects. The question for our consideration is a limited one, namely, whether the method of valuation prescribed in Proviso (c) is capable of yielding hypothetical rent in a market controlled by rent restriction legislation. To determine this question it is necessary to analyse the method of valuation set out in Proviso (c).

[39] There are two components which are required to be taken into account in the application of the method of valuation prescribed in Proviso (c). One is the estimated cost, at the time of the assessment, of erecting the building. The argument of the

petitioner was that this was a highly extravagant provision, because even in the contractor's method where the effective capital value is taken as the basis, it provides for deduction of allowances for depreciation on account of age, obsolescence etc., from the cost of the building as new while here no deductions are permitted to be made on account of depreciation or obsolescence from the cost of erecting the building. This criticism of the petitioners is not at all justified and that will be apparent if we look at the provision a little more closely. The amount which is required to be taken into account by the Commissioner under this provision is the estimated cost of erecting the building. The building would mean the building as it is at the time of the assessment with all the infirmities of age and obsolescence. The cost which is to be estimated by the Commissioner is the cost of erecting such a building and, therefore, in estimating the cost, the Commissioner would have to take into account age and obsolescence of the building. The Commissioner would have to consider how much it would cost, at the time of the assessment, to construct a building of the same plan, same design and same material and make suitable deductions for the purpose of reflecting age and obsolescence. The same allowances in respect of depreciation and obsolescence would have to be made by the Commissioner as are contemplated in the contractor's method. The second component speaks of the estimated market value, at the time of the assessment, of the land on which the building stands. Here also the contention of the petitioners was that it would be most harsh and oppressive to determine the annual rental value of the building by taking into account the market value of the land on which the building stands, as if the whole of the land were available as open land. We entirely agree with the petitioners that if such were the meaning of this provision, it would indeed be most extraordinary and unreasonable. But we do not think that is the correct meaning of this provision. When the law says that the market value of the land on which the building stands shall be taken as a component for arriving at the valuation of the building, what is meant is that the market value shall be taken with reference to the existing use of the land. The principle of rebus sic stantibus which demands that the land should be valued as if limited to its existing use is clearly incorporated in this provision. The method of valuation in Proviso (c) is, therefore, not very much different from the contractor's method except that the rate to be applied to the effective capital value which constitutes the fourth stage in the contractor's method is statutorily fixed at six per cent and the fifth stage which is an important stage in the contractor's method and which cures the contractor's method of its inadequacies, is absent. This discussion would show that the method of valuation prescribed in Proviso (c) is based on the market value of the land and building at the time of the assessment which would include the component of unearned increment in the value of the land and building and that

cannot possibly yield the hypothetical rent in a market controlled by rent restriction legislation, where the unearned increment in the value of the land and building is required to be ignored. There can, therefore, be no doubt that the method of valuation in Proviso (c) is not just another method given by the Legislature for determining the hypothetical rent contemplated in clause (ii) but it is a method which gives a wholly different result. It provides a different basis of valuation in respect of properties covered by Proviso (c). It is no doubt true that Proviso (c) states that the annual rent shall be deemed to be the figure arrived at by applying the method of valuation set out in the proviso, but that does not mean that the basis of valuation adopted is the annual rental value. This is nothing but a legislative device adopted by the Legislature. The Legislature laid down a different basis of valuation in Proviso (c) but called it by a legal fiction "annual rent" with a view to fitting it in with the scheme of clause (ii) of sec. 2(1 A). It cannot be said that merely because the Legislature used the expression "the annual rent shall be deemed to be", the basis of valuation is the annual rental value. The basis of valuation in Proviso (c) is, as we have pointed out above, fundamentally different from the annual rental value. The question which, therefore, requires to be considered is whether the Legislature was justified in providing a different basis of valuation in respect of buildings covered by Proviso (c).

[40] Now if we look at Proviso (c), it is clear that the classification made by it is not between buildings and when we use the word "buildings" we also mean to include industrial and other premises referred to in the opening part of Proviso (c) of a class not ordinarily let on the one hand and other buildings. If such a classification had been made and it had been provided that in respect of buildings of a class not ordinarily let, the basis of valuation shall not be the annual rent but shall be a different basis, it would have been, in our opinion, impossible to assail it as discriminatory. The Legislature could have said to itself that since the tax is levied on the value of the property to the owner, a legitimate distinction can be made between properties of a class not ordinarily let and other properties which belong to a class ordinarily let. Where a building is of a class ordinarily let, the rent bearing capacity of the building could legitimately be taken to be a proper measure of its value to the owner, irrespective whether the building is actually let or is self-occupied. But where the building is of a class not ordinarily let, the rent bearing capacity would be irrelevant because the class to which it belongs is never or seldom let and the value of the building to the owner would not be reflected by its rent-fetching capacity. The Legislature could, therefore, legitimately draw a distinction between buildings of a class which are not ordinarily let and other buildings and while laying down annual rental value as the basis of valuation in case of the latter category of

buildings, provide a different basis of valuation in case of the former. That would have been a legitimate classification permissible under the equality clause of the Constitution but the Legislature in enacting Proviso (c), did not make such classification: instead, it adopted a different basis of classification. Proviso (c) makes it clear that even in case of buildings of a class not ordinarily let, the annual rental must be taken as the basis of valuation and it is only if, in case of any building, the annual rent cannot in the opinion of the Commissioner be easily ascertained, that the Commissioner would be justified in adopting the method of valuation in Proviso (c). The concept of annual rental value is not abandoned or given up in case of buildings of a class not ordinarily let. If the Commissioner is of opinion that the annual rental value of a building which belongs to a class not ordinarily let can be easily estimated, he must adopt annual rental value as the basis of valuation. He cannot then resort to the method of valuation prescribed in Proviso (c). It is only if the annual rent determinable having regard to the provisions of the Bombay Rent Act cannot be easily estimated, that the Commissioner can fall back upon the basis of valuation set out in Proviso (c). The basis of classification made by Proviso (c) is, therefore, not that the value of the building to the owner is different in one class of cases than it is in the other but that in one class of cases there is, in the opinion of the Commissioner, difficulty in estimating the annual rent, while in the other there is no such difficulty. Is this basis of classification definite and intelligible: is it rational : does it pass the test of permissible classification under Article 14 of the Constitution?

[41] That raises the question as to what is the true meaning and effect of the condition which forms the basis of classification, namely, that the annual rent of the building cannot in the opinion of the Commissioner be easily estimated. The argument of the petitioners was that the words "in the opinion of the Commissioner" show that the question whether the annual rent of the building can be easily determined or not is left to the subjective opinion of the Commissioner and it is, therefore, open to the Commissioner to pick and choose at his own sweet will any building he likes out of the buildings covered by the opening part of Proviso (c), for applying the more onerous basis of valuation set out in Proviso (c). It would entirely depend on the subjective opinion of the Commissioner as to the case or difficulty in estimating the annual rent, whether the building should be assessed on the basis of annual rental value or on the basis prescribed by Proviso (c) and that would be clearly violative of the equality clause of the Constitution. We cannot agree with this contention of the petitioners. It is no doubt true that the words used are "in the opinion of the Commissioner" but these words are used because the determination of the question whether the annual rent can or cannot be easily determined involves an inferential process and it is the Commissioner who has

to make the determination in the first instance as the original assessing authority. The opinion as to the ease or difficulty in estimating the annual rent is to be arrived at first by the Commissioner as the original assessing authority and this power is to be reasonably and judicially exercised which excludes any subjective or arbitrary decision by the Commissioner : but the opinion so reached is not clothed with finality and it not excluded from review by the Chief Judge in an appeal preferred under sec. 406. The opinion arrived at by the Commissioner as the original assessing authority is subject to challenge in the appeal preferred under sec. 406 and the Chief Judge entertaining such appeal can decide whether the opinion formed by the Commissioner was right or wrong. It is, therefore, not possible to accept the contention of the petitioners that the opinion of the Commissioner contemplated by this provision is a subjective opinion. It is an opinion which can be challenged in appeal under sec. 406 and it is as much objective as any other decision of the Commissioner in the process of assessment. We may point out that the same view has been taken by the Supreme Court in regard to the words "in the opinion of the Income-tax Officer" in the proviso to sec. 13 of the Indian Income-tax Act, 1922. Vide Commissioner of Income-tax v. McMillan & Co. (1958) 33 I.T.R. 182.

[42] The petitioners then urged that the word "thereof in the condition "if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated" has reference to the class of buildings which are not ordinarily let and it does not refer to any particular building out of that chess and this condition does not, therefore, confer power on the Commissioner to pick and choose any building by forming a subjective opinion that its annual rent cannot be easily estimated. We do not think this construction suggested on behalf of the petitioners is justified. If we have regard to the context, it is clear that the word "thereof refers to the building in relation to which the question of determining annual letting value has arisen and not to the "class not ordinarily let" to which the building belongs. Proviso (c) starts by saying that for the purpose of sub-clause (ii), that is, for the purpose of determining the annual letting value in the case of any building of the "class not ordinarily let", if the annual rent thereof cannot in the opinion of the Commissioner be easily estimated, the annual rent shall be deemed to be six per cent of the total of the estimated market value determined according to the statutory formula. The words "if the annual rent thereof cannot.....be easily estimated" following as they do the words "in the case of any building" show beyond doubt that the word "thereof has reference to the building of which the "annual letting value" is to be determined by the Commissioner and not to the class to which the building belongs.

[43] It was then contended on behalf of the petitioners that the condition that the annual

rent of the building cannot in the opinion of the Commissioner be easily estimated was vague and indefinite because what might be easy for one Commissioner may be difficult to another depending upon the skill and expertise of each in the task of estimating the annual rent. This condition could not, therefore, form a valid basis of classification and it affected the classification with the vice of discrimination. The answer which the respondents sought to give to this contention was that, in the context of the legislative history of the provision, it was clear that when the Legislature used the expression "the annual rent thereof cannot in the opinion of the Commissioner be easily estimated", the Legislature meant to refer to the difficulty of estimating annual rent in cases where no recognised methods are available for determining the annual rent. This expression, contended the respondents, must mean : "If the annual rent cannot be easily estimated because there are no recognised methods available for determining the annual rent in the case of the building". We do not think we can accept this contention of the respondents. The construction suggested on behalf of the respondents requires us to add the words "by any recognised methods" which are not there in the provision. It would be contrary to every recognised cannon of construction to add words in a statutory provision when there is nothing in the context which compels us do so. If the Legislature intended that the condition should be that the annual rent cannot be easily estimated by any recognised methods, there was nothing easier for the Legislature than to say so, but the Legislature deliberately and advisedly did not add the words "by any recognised methods" in this provision. Moreover, it is difficult to see why the Legislature should have provided a different basis of valuation in cases where the annual rent cannot be easily estimated by any recognised methods. Even if any recognised methods are not available, the Commissioner may still be able to find out a method which might give him annual rent in a particular case and if he can do so, why should that particular case be treated differently from other cases in which the annual rent can be estimated by any recognised methods ? We apprehend that to confine the operation of this condition to cases where the annual rent cannot be easily estimated by any recognised methods might render the classification unconstitutional. The proper way of reading this condition, in our opinion, would be that the building must be such that its annual rent cannot in the opinion of the Commissioner be easily estimated by any appropriate method. If there is an appropriate method available by which the annual rent of the building can be estimated, it cannot be said that it is difficult to estimate it, and in that event, the basis of valuation set-out in Proviso (c) would not apply and the annual rent estimated by employing such method would have to be taken as annual letting value. The word 'easily' is not used in this condition in a relative sense but it is used to indicate the difficulty arising on account of absence of any appropriate method for

estimating the annual rent. Where there is an appropriate method, the Court would say to itself. Here, there is no difficulty in estimating the annual rent because I have an appropriate method available to me" and conversely, where there is no appropriate method, the Court would say "Here it is difficult to estimate the annual rent because there is no appropriate method which would give such annual rent". The basis of classification, therefore, is whether the building is such that its annual rent cannot in the opinion of the Commissioner the opinion being an objective opinion liable to be tested in appeal-be properly estimated by any appropriate method. This is clearly a valid basis of classification, because it is apparent that if there is no appropriate method by which the annual rent of the building-and when we speak here of the annual rent, we mean annual rent contemplated by sub-clause (ii), that is, hypothetical rent in a market controlled by rent restriction legislation-can be properly estimated, the Legislature would certainly be justified in prescribing a different method of valuation. Proviso (c) which prescribes a statutory method of valuation in respect of buildings covered by it cannot, therefore, be said to be violative of Article 14 of the Constitution.

[44] Re : Ground (B) (ii) :- There was a preliminary contention urged on behalf of the respondents against the maintainability of this ground of challenge. The preliminary contention was that the petitioners in all the petitions barring Special Civil Application No. 233 of 1970 being Limited Companies incorporated under the Company Law or Corporations incorporated under the relevant statutory enactments could not be regarded as citizens and hence it was not open to them to challenge the constitutional validity of Proviso (c) to sec. 2(lA)(ii) on the ground of infraction of Article 19(1)(f). There is prima facie great force in this preliminary contention supported as it is by at least two decisions of the Supreme Court, namely, Indo-China Steam Navigation Co. Ltd. v. Josjit Singh, A. I. R. 1964 S.C. 1140 and British India Steam Navigation Co. Ltd. v. Jasjit Singh, A.I.R. 1964 S.C. 1451 but it is not necessary for the purpose of the present petitions to adjudicate upon its validity since we are of the view, for reasons which we shall presently state, that on merits there is no substance in the present ground of challenge.

[45] So far as the merits of the challenge are concerned, there were two grounds on which the challenge was founded and, in our opinion, both grounds are without substance. The first ground of challenge was that the tax imposed on buildings covered by Proviso (c) is extortionate and confiscatory and it amounts to unreasonable restriction on the right to hold property guaranteed under Article 19(1)(f). The petitioners contended that the test of reasonableness would be that the tax should not be so high

as to make the holding of the property which is subjected to tax, uneconomic according to accepted rates of yield, Here in case of buildings covered by Proviso (c), said the petitioners, the tax is imposed by taking the annual rental value of the building at six per cent of the total of the estimated cost, at the time of the assessment, of erecting the building and the estimated market value, at the time of the assessment, of the land on which the building stands and this artificial annual rental value would be exceedingly high, amounting to as much as three times the real annual rental value and the tax would exhaust practically the whole of the rental income derivable from the building. This would clearly violate the requirement of reasonableness prescribed by Article 19(1)(f). This argument is in our opinion not well-founded. It stands completely answered by the observations of the Supreme Court in Assistant Commissioner v. Buckingham and Carnatic Co. Ltd., (supra). A similar argument was advanced in this case challenging the validity of land tax imposed by Madras Act 12 of 1966 on the ground that the said Act "by imposing a tax on the capital value at a certain rate was not correlated to the income or rateable value and, therefore, violates the requirement of reasonableness".

This argument was rejected by the Supreme Court in the following words :-

"It is not possible to put the test of reasonableness into the strait-jacket of a narrow formula. The objects to be taxed, the quantum of tax to be levied, the condition subject to which it is levied and the social and economic policies which a tax is designed to subserve are all matters of political character and these matters have been entrusted to the Legislature and not to the Courts. In applying the test of reasonableness it is also essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit. It was observed by this Court in Rai Ramkrishna v. State of Bihar, AIR 1968 SC 1667 at p. 1673 :

"It is of course true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative

competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Article 19 Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the Legislature for achieving its confiscatory purposes. This is illustrated by the decision of this Court in the case of Kunnathat Thatbunni Moopil Nair v. State of Kerala, A.I.R. 1961 SC 552 where a taxing statute was struck down because it suffered from several fatal infirmities. On the other hand, we may refer to the case of AIR 1962 SC 1563 where a challenge to the taxing statute on the ground that its provisions were unreasonable was rejected and it was observed that unless the infirmities in the impugned statute were of such a serious nature as to justify the description as a colourable exercise of legislative power, the Court would uphold a taxing statute'.

As a general rule it may be said that so long as a tax retains its character as a tax and is not confiscatory, or extortionate the reasonableness of the tax cannot be questioned".

It will be seen that so long as a tax retains its character as a tax and is not a cloak adopted by the Legislature for the purpose of achieving its confiscatory purpose, it cannot be struck down as unreasonable. Here, there is nothing to show that the tax imposed by reference to the basis of valuation adopted in Proviso (c) is confiscatory or extortionate so as to amount to a colourable exercise of legislative power. There is absolutely no material on which it could be said that, on the basis of valuation adopted in Proviso (c), the resultant tax would exhaust the bulk of the rental income from the property or

take away an exceedingly high proportion of it. It is, therefore, not possible to accept the contention of the petitioners that the tax imposed in case of buildings covered by Proviso (c) is unreasonable and Proviso (c) is on that account violative of Article 19(1)(f).

[46] The petitioners then urged, and that was the second ground of challenge, that the condition which attracts the applicability of Proviso (c), namely, that the annual rent of the building cannot in the opinion of the Commissioner be easily estimated confers unguided and unfettered power on the Commissioner to pick and choose, out of buildings described in the opening part of Proviso (c), any building he likes for imposition of higher burden of tax according to the statutory formula, since the selection is left wholly to his subjective opinion as regards the ease or difficulty in estimating the hypothetical rent. The conferment of such power on the Commissioner, the exercise of which depends on the formation of a subjective opinion as regards the case or difficulty experienced by the Commissioner in estimating the hypothetical rent, is, contended the petitioners, per se unreasonable and violates Article 19(1)(f). Now this contention would have undoubtedly had great force, if the construction on which it is based were right. But, as we have already pointed out above while discussing Ground (B)(i) the condition that the annual rent of the building cannot in the opinion of the Commissioner be easily .estimated, cannot be construed in the manner suggested on behalf of the petitioners. This condition does not leave it to the subjective opinion of the Commissioner to decide whether or not a particular case the annual rent cannot be easily estimated. The opinion to be formed by .the Commissioner in an objective opinion and it can be challenged in an appeal preferred under sec. 406. This ground of challenge based on infraction of Article 19(1)(f). must also, therefore, be rejected.

[47] Re; Ground (C) (i) :- This Court held in its decision dated 27th October 1969 that sec. 49 sub-sec. (1) as it stood prior to its amendment by Gujarat Act 5 of 1970 did not empower the Municipal Commissioner to depute any judicial or quasi-judicial power, duty or function to the Deputy Municipal Commissioner and since the power to investigate and dispose of complaints entrusted to the Municipal Commissioner under Rule 18 is a quasi-judicial power, it was not competent to the Municipal Commissioner to depute it to the Deputy Municipal Commissioner and the Deputy Municipal Commissioner had no jurisdiction or authority to investigate and dispose of complaints made by the petitioners. The assessments made by the Deputy Municipal Commissioner were, therefore, on the view taken by this Court, declared to be null and

void. This cause of invalidity of the assessments has been attempted to be removed by the Legislature by retrospective amendment of sec. 49 sub-sec. (1) and enactment of sec. 13(1) of Gujarat Act 5 of 1970. The Legislature has, by amending sec. 49 sub-sec. (1) with retrospective effect, conferred power on the Municipal Commissioner to depute even a judicial or quasi-judicial power, duty or function to the Deputy Municipal Commissioner. But there is a proviso which is also introduced with retrospective effect and that proviso requires inter alia that the exercise, performance or discharge of the judicial or quasi-judicial power, duty or function which is deputed to the Deputy Municipal Commissioner shall not be subject to any control by the Municipal Commissioner. This requirement is a necessary concomitant of the judicial or quasi-judicial nature of the power, duty or function deputed to the Deputy Municipal Commissioner, for it is elementary that there can be no interference or control by one officer in the exercise, performance or discharge of a judicial or quasi-judicial power, duty or function by another. Such interference or control except by way of appeal is inherently inconceivable in the field of judicial or quasi-judicial decision. It is in fact a contradiction or negation of judicial or quasi-judicial power, duty or function. Now, on the amended sec. 49 sub-sec. (1) read with the proviso, two subsidiary contentions were raised on behalf of the petitioners. One was that on a proper interpretation of the orders of deputation, there was no deputation by the Municipal Commissioner of his power to investigate and dispose of complaints under Rule 18 to the Deputy Municipal Commissioner. This contention is clearly unfounded because it is apparent on a plain reading of the orders of deputation dated 20th November 1964 and 21st April 1966, Exhibits Fl and F2 respectively, and the orders of deputation dated 2nd May 1968 and 21st December 1970, Exhibit K collectively to Special Civil Application No. 233 of 1970, that all powers and duties of the Municipal Commissioner in respect of Tax Department and the Valuation and Appellate Departments were deputed to the Deputy Municipal Commissioner and the Deputy Municipal Commissioner could, therefore, exercise the power and perform the duty of investigating and disposing of complaints under Rule 18, that being a part of the functioning of these departments. The second contention was that the aforesaid orders of deputation provided for exercise of control by the Municipal Commissioner and the exercise of power by the Deputy Municipal Commissioner under Rule 18 was, therefore, had as it was controlled by the Municipal Commissioner. This contention is also equally unsustainable. In the first place there is no clause in the orders of deputation-at least none could be pointed out on behalf of the petitioners-which reserves to the Municipal Commissioner the power to control the Deputy Municipal Commissioner in the exercise of the power under Rule 18 and secondly, there is no averment in any of the petitions that in respect of any matters arising in the

assessments, the Municipal Commissioner in fact exercised any control over the exercise of power by the Deputy Municipal Commissioner under Rule 18.

[48] The petitioners then contended that sec. 13(1) of Gujarat Act 5 of 1970 was couched in such wide language that it excluded challenge to the validity of assessments on any ground whatsoever and gave complete immunity to the assessments. Even if the assessments suffered from any infirmity other than that arising from lack of jurisdiction or authority in the Deputy Municipal Commissioner, they were protected by sec. 13(1) and their validity could not be assailed on any ground. That clearly imposed unreasonable restriction on the right to hold property guaranteed under Article 19(1)(f). of the Constitution. This was in fact the second branch of the argument under the head of challenge (C). But a plain reading of the language of sec. 13(1) is sufficient to convince anyone that this argument is wholly untenable. Sec. 13(1) ensures the validity of past assessments only in so far as they may be held to be bad on the ground that the Deputy Municipal Commissioner had no jurisdiction or authority to make the assessments. It does not remove every cause of invalidity. It does not exclude challenge on every ground. It cures only one infirmity and that is the infirmity arising from the circumstance that by reason of the power, duty or function of the Municipal Commissioner under Rule 18 being of a judicial or quasi-judicial nature, it could not be validly deputed or delegated under the unamended sec. 49 sub-sec, (1) and the Deputy Municipal Commissioner had, therefore, no jurisdiction, power or authority to investigate and dispose of any complaints. Sec. 13(1) has no wider ambit or reach and cannot be assailed on that ground.

[49] These were, however, only subsidiary contentions. The main contention of the petitioners was directed against the constitutional validity of the retrospective amendment of sec. 49 sub-sec. (1) and the enactment of sec. 13(1) by Gujarat Act 5 of 1970. These provisions were challenged as constitutionally invalid on the ground that they are violative of Article 19(1)(f). of the Constitution. The petitioners pointed out that according to the scheme of the Corporations Act and the Taxation Rules, the process of assessment is a necessary sine qua non for creation of liability for payment of tax and since the assessments made by the Deputy Municipal Commissioner prior to 3rd December 1969 were null and void on account of lack of jurisdiction or authority in the Deputy Municipal Commissioner to make assessment, no tax was payable by the petitioners and other property-owners and the Corporation was not entitled to recover it by adopting any coercive measures against them. This was the position under the unamended law as it stood prior to the enactment of Gujarat Act 5 of 1970. But, by

retrospectively amending sec. 49 sub-sec. (1) and enacting sec. 13(1), the Legislature validated all past assessments made by the Deputy Municipal Commissioner, even though they were null and void and had no consequence or effect at the date when they were made. The result is that, by reason of this retrospective validating legislation, tax which was not payable at the date when assessments were made has now become payable with retrospective effect from such earlier date with all the attendant consequences of non-payment and coercive measures adopted for recovery of tax are validated, even though at the date when they were taken, the tax payer was justified in refusing to pay the tax and the coercive measures were illegal and invalid. It is true, said the petitioners, that the Legislature has undoubted power to enact retrospective legislation and this power can be exercised even in respect of fiscal statute, but in order that liability for payment of tax may be effectively created with retrospective effect the machinery of assessment as well as the machinery of collection of the tax should be adapted to the new situation created by the retrospective legislation. Where assessment is a necessary step in the creation of liability for payment of tax, a machinery for fresh assessment must be provided, because it is possible that, when the original assessment was made, the tax payer might have said to himself and quite legitimately, that he need not seriously participate in the assessment proceeding as it is without jurisdiction and void and even if it goes against him, he need not prefer an appeal, as an appeal against a void order would be an exercise in futility and in the circumstances it would cause great injustice to the taxpayer to retrospectively impose tax liability on him without affording him a real opportunity to contest it. Equally, a fresh due date for payment must be declared, because otherwise the tax-payer would be visited with consequences of default in respect of non-payment of an amount which he was not liable to pay at the material time and non-payment of which did not then constitute any default and that would entail great hardship to the tax payer. These two conditions are essential requisites for valid enactment of a fiscal legislation which seek to create retrospective liability for payment of tax. Here, by retrospective amendment of sec. 49 sub-sec. (1), the Deputy Municipal Commissioner is retrospectively invested with power to make assessment of tax, but there is no provision in the amending legislation providing any machinery for fresh assessment of tax by the Deputy Municipal Commissioner or conferring a fresh right to appeal against assessment made by the Deputy Municipal Commissioner or declaring a fresh due date for payment of tax assessed by the Deputy Municipal Commissioner. The effect, therefore, is as if the liability to pay tax is created without there being any assessment. The assessment purported to be made by the Deputy Municipal Commissioner at a time when he had no authority cannot be regarded as an assessment in the eye of the law It would be no better than an assessment

purported to be made by a stranger. An opportunity of hearing given by a stranger who has no jurisdiction to make the assessment would be no opportunity at all, for it would be invested with an air of unrealism and any attempt by the Legislature to validate the assessment made by a stranger would mean imposition of tax liability on the tax-payer without giving him any real opportunity to contest the quantification of tax liability. Where assessment made by a stranger is validated by the Legislature without anything more the position would be as if the Legislature has created the liability for movement of tax without any assessment by a competent authority. It would be tantamount to legislative assessment without any opportunity of hearing or filing an appeal. That is something which is impermissible to the Legislature both because assessment is a quasi-judicial function which the Legislature cannot perform and also because assessment without affording any real opportunity to the tax-payer to contest the determination of tax liability is unreasonable. In fact any law which purports to validate with retrospective effect quasi-judicial orders which were void when made, without providing any machinery for re-bearing, is per se "unreasonable and impairs the fundamental right of property guaranteed under Article 19(1) (f) The Legislature must, in such a case, provide a machinery for resh hearing as did the U.P. Legislature in Kuwar Tnvikram v. State of Uttar Prh 57 I T R 17. Here, as already pointed out above, the amending legislation does not provide any machinery for rehearing, either by way of fresh assessment to be made by the Deputy Municipal Commissioner or by was of fresh right of appeal against the assessment made by the Deputy Municipal Commissioner nor does it declare a new due date for payment of tax assessed and it, therefore, suffers from the vice of procedural unreasonableness and is ultra vires and void as offending Article 19(1) m in so far as it retrospectively amends sec. 49 sub-sec. (1) and enacts sec. 13(1). The logical consequence of this would be that all assessments made by the Deputy Municipal Commissioner upto 3rd December 1960, being the date of commencement of Ordinance 6 of 1969 would be void and even assessments made subsequent to 3rd December 1969 in respect of the official years 1969-70 and 1970-71 would be bad, because void entries in the Assessment Book for the official year 1968-69 were adopted by the Municipal Commissioner as the initial entries for the official years 1969-70 and 1970-71 under Rule 21. This was broadly the contention urged on behalf of the petitioners and there can be no doubt that, if it is well-founded, it would result in invalidation of all assessments made by the Deputy Municipal Commissioner for official years upto 1970-71. But, for reasons which we shall immediately proceed to state, we do not think there is any force in this contention and it must be rejected.

[50] Before we proceed to deal with this contention on merits we may refer to a

preliminary objection raised on behalf of the respondents. The respondents urged that the petitioners were not entitled to challenge the constitutional validity of the retrospective amendment of sec. 49 sub-sec. (1) and the enactment of sec. 13(1) of Gujarat Act 5 of 1970 on ground of infraction of Article 19(1)(f) as they were non-citizens and their challenge was liable to be rejected in limine. There is prima facie force in this preliminary objection but we do not propose to decide it as we are of the view that even on merits, the challenge is without substance and must be rejected.

[51] The contention of the petitioners, plausible though it may seem, is in our opinion wholly without merit. It is lacking in factual basis. There is no averment made in any of the petitions that the petitioners or for the matter of that, any tax-payer who was dissatisfied with the initial entries made in the Assessment Book did not file a complaint before the Deputy Municipal Commissioner or avail himself of the opportunity of being heard against the proposed assessment, because, in his view, sec. 49 did not permit delegation of the power to dispose of complaints to the Deputy Municipal Commissioner and the Deputy Municipal Commissioner had on that account no jurisdiction or power to dispose of complaints and make assessment. It is not the case of the petitioners that any of the tax-payers, much less any of the petitioners, did not prosecute his complaint before the Deputy Municipal Commissioner because he thought that the Deputy Municipal Commissioner had no jurisdiction or power to dispose of the complaint or to make the assessment or did not file an appeal against the decision of the Deputy Municipal Commissioner disposing of the complaint because he took the view that the disposal of the complaint by the Deputy Municipal Commissioner was a nullity and it was unnecessary to file an appeal against it. We find that in fact the petitioners in all the petitions have preferred appeals against the disposal of their complaints by the Deputy Municipal Commissioner. It is, therefore, impossible to hold, in the absence of necessary averment to that effect by the petitioners, that the disposal of complaints by the Deputy Municipal Commissioner was made without affording a real opportunity to the petitioners or other tax-payers of contesting the assessment or that the petitioners or other tax-payers were deprived of an opportunity of filing an appeal to challenge the assessment made by the Deputy Municipal Commissioner. We cannot presume as a matter of law that there might have been some taxpayers who might not have lodged their complaint before the Deputy Municipal Commissioner or preferred an appeal against the decision of the Deputy Municipal Commissioner under the belief-which was then well-founded-that the Deputy Municipal Commissioner had no jurisdiction or power to dispose of complaints and make assessment and the decision of the Deputy Municipal Commissioner was, therefore, null and void. It is difficult to believe that any

tax-payer would take the risk of not contesting the proposed assessment by the Deputy Municipal Commissioner or refrain from preferring an appeal against the decision of the Deputy Municipal Commissioner on the chance that a Court of law might hold that the Deputy Municipal Commissioner had no jurisdiction or power to dispose of complaints and make assessment. It would be most fool-hardy for a taxpayer to do so and we can safely assume that there would be hardly any such tax-payer, unless of course the petitioners can point out such taxpayers which, as we have pointed out above, the petitioners have not done. But even if there be any such exceptional tax-payers who did not prosecute their complaint before the Deputy Municipal Commissioner or prefer an appeal against the decision of the Deputy Municipal Commissioner on the view that the Deputy Municipal Commissioner had no power or authority to dispose of complaints and make assessment, the Legislature could legitimately ignore such exceptional cases while enacting an amendatory provision encompassing the generality of tax-payers. The Legislature could say to itself that it is not necessary to provide a machinery for reopening the assessment made by the Deputy Municipal Commissioner or confer a fresh right of appeal against the decision of the Deputy Municipal Commissioner, because such a provision would be unnecessary and futile in almost all cases barring a few exceptional ones and if such a provision were to be made, many assessments which were made by the Deputy Municipal Commissioner after full contest by the taxpayers would be liable to be set at naught at the instance of tax-payers who might try to have a second innings without any real ground for reopening the assessment and that would cause immense public mischief. There can be no doubt that it would be contrary to public interest to allow assessments made by the Deputy Municipal Commissioner after full opportunity to the taxpayers to contest the proceedings, to be set aside merely on the theoretical consideration that the Deputy Municipal Commissioner had no power or authority to make the assessment at the time when it was made, though he is now retrospectively invested with power or authority to do so. If the taxpayers have appeared and contested the proposed assessment and where they are dissatisfied with the decision of the Deputy Municipal Commissioner, they have preferred appeals against it, and they have not suffered any detriment at all by reason of the Deputy Municipal Commissioner having no jurisdiction or power to make the assessment, we fail to see what possible harm or prejudice can result to the tax-payers if the Legislature retrospectively invests the Deputy Municipal Commissioner with jurisdiction or authority to make the assessment. We may in this connection cite the following passage from the Article of Charles B. Hochman in 73 Harvard Law Review 692 which has been quoted with approval by the Supreme Court in Assistant Commissioner, Madras v. Buckingham & Carnatic Co. Ltd., (supra) :-

"It is necessary that the Legislature should be able to cure inadvertent 'defects in statutes or their administration, by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since, had the Legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retrospective curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect..... The Court has been extremely reluctant to override the legislative judgment as t the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenue, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it. Indeed, as early as 1935 one commentator observed that 'arbitrary retrospectivity' may continue.....to rear its head in tax briefs, but for practical purposes, in this field, it is as dead as wager of law."

We are, therefore, of the view that the retrospective amendment of sec. 49 and sec. 13(1) of Gujarat Act 5 of 1970 do not impose any unreasonable restriction and they cannot be hold to be violative of Article 19(1)(f). of the Constitution. We may point out that the retrospective amendment of sec. 49 and the validation of assessments made by the Deputy Municipal Commissioner by sec, 13(1) of Gujarat Act 5 of 1970 do not have the effect of imposing on the defaulting taxpayers penalty or offence to which they were not liable under the law as it stood prior to the promulgation of Ordinance 6 of 1969. The present contention based on infraction of Article 19(1)(f). must, therefore, fail.

[52] Re: Ground (C)(ii) : This ground is already covered by the discussion in regard to Ground (C) (i) and we need not repeat what we have said there regarding the proper construction of sec. 13(1) of Gujarat Act 5 of 1970. The construction of sec. 13(1) contended for on behalf of the petitioners is wholly untenable and the challenge to the constitutionality of sec. 13(1) based on that construction must, therefore, be rejected.

[53] Re: Ground (D) (i) : We then go on to consider the next ground of challenge which

relates to the constitutional validity of the proviso to sec. 129(b). We have already pointed out the genesis of this Proviso. This Court held in its judgment dated 27th October 1969 that having regard to the scheme of taxation embodied in the Corporations Act and particularly Secs. 129 and 137, it was clear that the total cost of conservancy service was to be divided amongst the properties according to their rateable value and, therefore, the rate of conservancy tax fixed by the Corporation for being applied to the rateable value must be uniform and "it cannot vary from due class of properties to another". The Legislature, with a view to overriding this decision, introduced the proviso in sec. 129(b) with retrospective effect empowering the Corporation to fix different rates of conservancy tax for different classes of properties. The question is, whether the conferment of this power suffers from any constitutional infirmity. There are two grounds on which it is assailed as constitutionally invalid. The first is that it offends the equal protection clause of the Constitution and the second is that it suffers from the vice of excessive delegation of legislative power. Both grounds are based on a common objection, namely, that the power conferred on the Corporation is unguided and unfettered and leaves it open to the Corporation at its own sweet will to pick and choose any class of properties for differential treatment in the matter of fixation of rate of conservancy tax. Let us examine whether these grounds are well founded.

[54] We will first examine the ground based on violation of the equal protection clause of the Constitution. It is now well-settled as a result of several decisions of the Supreme Court of which we may mention only two, namely, Ram Krishna Dalmia v. Justice Tendolkar, A.I.R. 1958 S.C. 538 and Jyoti Pershad v. Union of Territory of Delhi, A.I.R. 1961 S.C. 1601 that where a statute does not itself make a classification of persons or things to which its provisions are intended to apply but leaves it to the discretion of a subordinate authority to select and classify persons or things for the application of its provisions, the statute must lay down a policy or principle to guide and control the exercise of discretion by the subordinate authority. If the statute leaves the entire matter of selection classification to the unrestrained will of the subordinate authority without laying down any policy or principle or disclosing any tangible or intangible purpose which would control and regulate the exercise of discretion of the subordinate authority, the statute would be liable to be condemned as discriminatory. The reason is that if no guidance is provided by the Legislature and the discretion vested in the subordinate authority is uncontrolled and unfettered, it would enable the subordinate authority to accord unequal or discriminatory treatment to persons or things similarly situate. The power conferred on the subordinate authority being arbitrary and uncontrolled, it would be open to the subordinate authority to discriminate between persons or things similarly

circumstanced and the statute would thus abet unjust discrimination. That would clearly expose the statute to the charge of violation of the equality clause. But if, on the other hand a definite policy or principle is laid down by the Legislature which would serve as a guide to the subordinate authority in the exercise of its discretion, the legislation would not be liable to be condemned as discriminatory, for the classification made by the subordinate authority would not then be arbitrary or uncontrolled but would be regulated by the policy or principle laid down by the Legislature, unless of course the policy or principle itself is discriminatory, in which event the exercise of discretion in accordance with that policy or principle would result in impermissible classification. Where, therefore, a statute does not itself make a classification but vests a discretion in a subordinate authority to select and classify, the question would always arise : has the Legislature laid down any policy or principle or indicated any definite objective or purpose which would guide and control the exercise of discretion by the subordinate authority or is the discretion conferred on the subordinate authority unfettered and uncontrolled so that the subordinate authority can select and classify persons or things as it likes with impunity and make irrational and unjust discrimination ? If it is the former, the statute would be valid subject, of course, to the qualification that the policy or principle or the objective or purpose is not objectionable: if it is the latter, the statute would be violative of the equal protection clause and would be invalid.

[55] Now before we examine the validity of the proviso to sec. 129(b) in the light of this test, it would help considerably if we try to understand what is the true nature of conservancy tax. It is clear from sec. 129(b) that conservancy tax is a tax of a special kind and differs from general tax in an important feature. General tax has no relation to any particular service supplied or expenditure incurred by the Corporation. It is an impost for augmenting the general revenues of the Corporation and, subject to the minimum and maximum prescribed by sec. 129(b), it may be levied at any rate or rates which may be fixed having regard to the needs of the Corporation in implementing the purposes of the Corporations Act. But so far as conservancy tax is concerned, the power of the Corporation is not so wide. Though conservancy tax is a tax and has been rightly designated as a tax, it differs from general tax in this respect that its rate is co-related to the conservancy service supplied by the Corporation. See. 129(b) provides that conservancy tax shall be levied at such percentage of the rateable value as will "in the opinion of the Corporation suffice to provide for the collection, removal and disposal, by municipal agency, of all extrementitious and polluted matter from the privies, urinals and cesspools and for efficiently maintaining and repairing the municipal drains constructed or used for the reception or conveyance of such matter". The rate of tax

must be such that the total amount of conservancy tax is sufficient to meet the cost of conservancy service supplied by the Corporation. The total cost of conservancy service to the Corporation is thus the measure of the conservancy tax. The conservancy tax is, therefore, really in the nature of service tax. It is a tax for a particular specified service, namely, conservancy service supplied to the community. But its incidence is not distributed amongst the owners or occupiers of properties according to the conservancy service supplied to each of them. Had that been so, it would have been a fee rather than a tax. But it is unquestionably a tax and not a fee because what is paid by each owner or occupier of property as conservancy tax is not co-related to the volume of conservancy service supplied to him. How then is the incidence of conservancy tax distributed, or, in other words, since the total cost of conservancy service is the measure of the tax, how is the total cost of conservancy service divided amongst the owners or occupiers of properties.

[56] Prior to the introduction of the proviso in sec. 129(b), the burden of the total cost of conservancy service, according to the view taken by this Court in its judgment dated 27th October 1969, was to be divided according to the rateable value of the properties and it was for this reason that the Court held that the percentage fixed by the Corporation must be uniform and it could not vary from one class of properties to another. It would thus be seen that the Legislature, under the law as it stood before the addition of the proviso in sec. 129(b), while conferring power on the Corporation to fix the rate of conservancy tax, provided sufficient guidance to the Corporation as to how the power was intended to be exercised. The guidance was two-fold. First, the Legislature said that the rate of tax should be so fixed that the total amount of conservancy tax is sufficient to meet the cost of conservancy service supplied by the Corporation and secondly, the Legislature laid down that the burden of total cost of conservancy service should be divided in proportion to the rateable value of the properties and a uniform rate of tax arrived at on this basis must be fixed. This was clear guidance to the Corporation in the exercise of the power to fix the rate of conservancy tax and the conferment of the power could not be said to be violative of Article 14 of the Constitution.

[57] But the question is, whether the power conferred on the Corporation by the proviso to sec. 129(b) to fix different rates of conservancy tax for different classes of properties is discriminatory and violative of Article 14 of the Constitution. The argument of the petitioners was that the Legislature has, by enacting the proviso to sec. 129(b), vested unfettered and uncontrolled power in the Corporation to select and classify properties in

such manner as it likes and having made classification of properties at its own sweet will, to fix such rates of tax for different classes of properties as it chooses, without laying down any policy or principle or disclosing any tangible or intangible purpose which would guide and control the exercise of such power by the Corporation, so that it is open to the Corporation, in arbitrary exercise of such power, to pick and choose any class of properties for differential treatment in the matter of fixation of rates of conservancy tax. Now there can be no doubt, having regard to the principles which we have discussed above, that if this charge were true, the proviso to sec. 129(b) would have to be struck down as constitutionally invalid on ground of infraction of Article 14. But we do not think the charge is well-founded. If we examine the scheme of the relevant sections, it is clear that the Legislature has provided sufficient guidance to the Corporation in the exercise of this power. It may be noted, in the first place that, as already pointed out above, conservancy tax is in the nature of service tax. It is a tax levied for supplying conservancy service to the community and the total cost of conservancy service to the Corporation is the measure of the tax. The total amount of conservancy tax is thus directly related to the volume of conservancy service supplied by the Corporation to the community as a whole. Then, if we go to sec. 137, we find that the Legislature has by sub-sec. (1) conferred power on the Commissioner to fix a special rate in respect of any hotel, club, stable, industrial premises or other large premises and, according to sub-sec. (3), the special rate is to be fixed "with reference to the cost or probable cost of the collection, removal and disposal, by the agency of Municipal conservancy staff, of extrementitious and polluted matter from the premises". The special rate is permitted to be fixed in respect of large premises such as hotel, stable, club, industrial premises etc., because the volume of conservancy service required to be supplied by the Corporation in respect of such premises may be disproportionately heavy and it may not be reflected adequately in the larger rateable value of such premises. But even in these cases, where a special rate may be fixed in view of the disproportionately heavy burden of conservancy service, the fixation of the special rate has to be with reference to the cost or probable cost of such conservancy service supplied by the Corporation. It will, therefore, be seen that the legislative intent clearly is that the cost of conservancy service supplied by the Corporation should be a guiding consideration in the fixation of rates of conservancy tax. The total cost of conservancy service supplied to the whole community has to be taken into account by the Corporation in determining the total quantum of conservancy tax while the cost of conservancy service supplied in respect of any individual premises has to be taken into account by the Commissioner in fixing the special rate of conservancy tax for such premises. If that be so, can there be any doubt that the Legislature intended that in

making classification of properties and fixing different rates of conservancy tax for different classes of properties, the Corporation should be guided by the same consideration, namely, the cost of conservancy service supplied in respect of each class of properties ? The same guidance which is given in respect of determination of total quantum of conservancy tax and in respect of determination of special rate of conservancy tax for any individual premises must also guide the Corporation in fixing different rates of conservancy tax for different classes of properties. The cost of conservancy service supplied by the Corporation must be the guiding principle for differentiating between different classes of properties and fixing different rates of conservancy tax for them. The Legislature has thus clearly laid down a standard or principle to guide and control the exercise of power by the Corporation. This standard or principle is fair and just, as it is calculated to bring about an equitable distribution of the burden of the total cost of conservancy service. If the distribution were made only on the basis of rateable value, as was the case under the unamended law prior to the introduction of the proviso in sec. 129(b), it might not work out a fair and just result. It is quite possible that, of two properties with the same rateable value, one might need a much larger volume of conservancy service than the other and yet the amount of conservancy tax payable by both would be the same if the total cost of conservancy service is distributed in the proportion of rateable value. The differences in rateable value of properties may not necessarily reflect-and even if they reflect, they may not do so accurately and in like proportion-the differences in the volume of conservancy service supplied in respect of those properties. It would not, therefore, be equitable to distribute the total cost of conservancy service by rigidly applying the divisor of rateable value. Conservancy tax being service tax, it would introduce greater equity in distribution if the total cost of conservancy service were distributed amongst different classes of properties according to the volume of conservancy service supplied to them. That would be a middle course between distributing the total cost of conservancy service according to the volume of conservancy service supplied in respect of each property (which would make the impost a fee instead of a tax) and distributing the total cost of conservancy service according to the rateable value of the properties, irrespective of the actual volume of conservancy service required to be supplied to them. The Legislature adopted this middle course and empowered the Corporation to fix different rates of conservancy tax for different classes of properties in the light of the guidance provided by it. The power conferred on the Corporation is thus not unfettered or uncontrolled. The Legislature has provided a guiding principle to control and regulate the exercise of this power and that guiding principle is the volume which is the same thing as cost, since

cost varies directly with volume of conservancy service supplied to each class. If a disproportionately heavy volume of conservancy service involving extra or higher cost is required to be supplied to a particular class of properties, the Corporation may fix a different rate of conservancy tax for such class of properties, having regard to the cost of supplying conservancy service to that class. The proviso to sec. 129(b) conferring this power on the Corporation cannot, therefore, be successfully challenged as violative of the equality clause of the Constitution.

[58] The challenge to the constitutional validity of the proviso to sec. 129(b) on the ground of excessive delegation of legislative power must also fail, since, as pointed out by the Supreme Court in Jyoti Pershad v. Union Territory of Delhi (supra), this challenge is really nothing but another form or rather another aspect of the objection based on grant of unguided and unfettered power to the Corporation to fix different rates of conservancy tax for different classes of properties. We have already dealt with this objection while examining the challenge based on infraction of Article 14. There we have pointed out that the power conferred in the Corporation by the proviso to sec. 129(b) is not arbitrary or vagrant but it is controlled and regulated by a guiding principle or policy provided by the Legislature. The law is now well-settled that where a statute delegates to a subordinate authority the power to fix rates of tax, which would include determination of different rates of tax for different classes of properties, no unconstitutional delegation of legislative power is involved, so long as the statute lays down a policy or principle which would furnish guidance to the delegate in exercising such power. Vide Corporation of Calcutta v. Liberty Cinema, A.I.R. 1965 S.C. 1107: Municipal Corporation of Delhi v. Birla Mills, A.I.R. 1968 S.C. 1232 and G. B. Mody v. Ahmedabad Municipality, A.I.R. 1971 S.C. 2100. The power conferred on the Corporation by the proviso to sec. 129(b) to fix different rates of conservancy tax for different classes of properties does not, therefore, suffer from the vice of excessive delegation and cannot be challenged as constitutionally invalid on that ground.

[59] Re: Ground (D)(ii) :- That takes us to a consideration of the question as to whether the proviso to sec. 129(b) is constitutionally invalid by reason of being given retrospective operation. The argument of the petitioners was that the power conferred on the Corporation by the proviso to sec. 129(b) was subject to the limitation that it should be exercised according to the guiding principle provided by the Legislature and the effect of giving retrospective operation to the conferment of this power and enacting the validating provision in sec. 13(2) of Gujarat Act 5 of 1970 was to validate the exercise of power made at a time when there was no such limitation. The introduction of

the proviso in sec. 129(b) with retrospective effect and the enactment of sec. 13(2) of Gujarat Act 5 of 1970, therefore, had the effect of validating that which was done without any guiding principle and the proviso to sec. 129(b) and sec. 13(2) of Gujarat Act 5 of 1970 were consequently bad as being violative of Articles 14 and 19(1)(f). of the Constitution. This argument, plausible though it may seem, is in our opinion, not well-founded and must be rejected. Prior to the introduction of the proviso in sec. 129(b), the Corporation had, according to the decision of this Court dated 27th October 1969, no power to fix different rates of conservancy tax for different classes of properties and yet the Corporation passed resolutions year after year fixing at first 1\ per cent and subsequently, 9 per cent, as the rate of conservancy tax for hotels, clubs, stables, theatres or cinemas and other large premises including mills and factories, while the rate of conservancy tax fixed for other properties was only 3 per cent. These resolutions were passed in exercise of power assumed by the Corporation to be vested in it but since such power was non-existent, they were null and void. The conferment of such power with retrospective effect by the introduction of the proviso in sec. 129(b) cured the infirmity arising out of lack of power. But if there was any other infirmity in the exercise of the power, that was not cured by the retrospective addition of the proviso in sec. 129(b). Sec. 13(2) of Gujarat Act 5 of 1970 also cured the invalidity of the resolutions only in as far as such invalidity arose out of lack of power. It did not cure the invalidity, if any, arising out of other causes. Every exercise of assumed power was not sought to be validated by it. If, therefore, the exercise of assumed power did not conform to the guiding principle above referred to, it would be invalid, because it would not be justifiable by reference to the power restrospectively conferred, such power being subject to the limitation of the guiding principle. Since the norm or standard laid down by the guiding principle is an objective one, it can always be determined whether the exercise of the assumed power by the Corporation was in conformity with the norm or standard : if it was, it would be valid exercise of power by reason of the retrospective conferment, but if it was not, it would be invalid. The question whether the purported exercise of power by the Corporation was in fact guided by the norm or standard does not become appropriate or relevant only on the assumption of existence of the power. Even if the Corporation had wrongly assumed that it had the power, it could still be guided by the same norm or standard. The necessity of compliance with a guiding principle is guarantee against arbitrariness and it is as much a moral virtue as a legal compulsion to eliminate or avoid arbitrariness. The Corporation could have, therefore, in exercise of the assumed power, followed the same guiding principle. Moreover, the guiding principle has not been inferred by us from the express conferment of the power. It has been inferred from the nature of the conservancy tax and the scheme of the

provisions relating to it and therefore, it would still be there to furnish guidance even if the Corporation wrongly assumed that it had such power under the unamended sections. The exercise of the assumed power by the Corporation was, therefore, validated by the retrospective addition of the proviso in sec. 129(b) and the enactment of sec. 13(2) of Gujarat Act 5 of 1970, only if it was in conformity with the guiding principle laid down by the Legislature. No violation of Article 14 or Article 19(1)(f). was consequently involved in the introduction of the proviso in sec. 129(b) with retrospective effect and the enactment of sec. 13(2) of Gujarat Act 5 of 1970.

[60] Re: Ground (D) (Hi) :- The question then arises whether the fixation of the rate of 9 per cent for the official years 1967-68 to 1970-71 in respect of conservancy tax for the class of properties comprising hotels, clubs, stables, theaters or cinemas and other large premises including mills and factories when the rate of conservancy tax fixed for other properties was only 3 per cent, was in conformity with the guiding principle laid down by the Legislature or was in disregard of it. Now, as pointed out above, the guiding principle enacted by the Legislature is that the classification of properties may be made and different rates of conservancy tax may be fixed for different classes of properties according to the cost of conservancy service supplied to each class. The power to fix different rates of conservancy tax for different classes of properties is limited by the actual cost element and the differential rate of conservancy tax fixed for a particular class of properties must be related to the actual cost involved in supplying conservancy service to that class. The Corporation cannot arbitrarily classify properties and fix different rates of conservancy tax for them as it likes. It must take into account and be guided by the / actual cost of supplying conservancy service in relation to each class. Now here in the present case there is nothing to show that the Corporation acted in conformity with this guidance in fixing 9 per cent as the rate of conservancy tax in respect of large properties, when the rate of conservancy tax fixed in respect of these properties was only 3 per cent. The Corporation has not produced only material to show that differential rates of tax were fixed by the Corporation having regard to the cost of conservancy service supplied to each of these two classes. The only averment made on behalf of the Corporation in this respect is to be found in the affidavit-in-reply sworn by the Assessor and Collector of the Corporation in Special Civil Application No. 300 of 1971. Paragraph 8. 4. 5 of this affidavit gives the following justification for fixing a higher rate of conservancy tax for large properties as compared to the rate of conservancy tax for other properties :

"I submit that the properties in respect of which the Corporation has

determined the rate of conservancy tax at 9 per cent are properties belonging to a class the cost of providing conservancy services to which is proportionately higher than corresponding cost in respect of other properties.....I state that it is not necessary for the purpose of determining such higher rate that the Corporation or the Commissioner should separately work out the expenditure involved in dealing with these properties. I deny that there is no valid justification for providing a higher rate of conservancy tax in respect of such properties. I submit that it is competent to the Corporation to take notice of the higher cost of conservancy services required to be incurred in respect of these properties and to form an opinion on general facts that the cost of providing conservancy services to these properties would be higher and to what extent. I submit that matters of this type do not demand an arithmetical accuracy and broad compliance in matters of this type is sufficient for compliance with law. I submit that according to the estimate of the Municipal Commissioner, to meet the total expenditure of conservancy services, if a unit rate of conservancy tax was to be provided, it was necessary to determine the rate of conservancy tax at 4 per cent of the rateable value. The Corporation has, however, sought to distribute the incidence of conservancy tax equitably among all the lands and buildings, determine the general rate of conservancy tax at 3 per cent and determine a higher rate of conservancy tax at 9 per cent in respect of industrial premises and other properties as provided in the said resolution. I submit that the use of the premises has a material relation to the cost of providing conservancy services and to the maintenance and repairs thereof. I submit that the hotels, clubs, industrial premises and other large premises referred to in sec. 129(b) as well as in sec. 137 are premises which need relatively larger conservancy services".

It will be seen from this passage that according to the Corporation-and the opinion of the Corporation on this point being reasonably held cannot be ques-tioned-hotels, clubs, theatres or cinemas, industrial premises and other large premises need relatively larger conservancy service and the cost of providing conservancy service to them is "proportionately higher than corresponding cost in respect of other properties". There can, therefore, be no doubt that these large properties could be treated as a class and given differential treatment in the matter of fixation of conservancy tax from other

properties. But on the question as to what rates of conservancy tax should be fixed, we do not find anything in the affidavit-in-reply which would show that the Corporation was guided by the actual cost of conservancy service supplied to each class. The Corporation did not bother to find out even roughly, what would be the cost of supplying conservancy service to these large properties as compared to the cost in relation to the other properties. The Corporation, as a matter of fact, asserted that it was not necessary to work out such cost separately in respect of each class of properties. It was merely on "general facts" that the Corporation formed an opinion "that the cost of providing conservancy services to these properties would be higher and to what extent " The Corporation did not disclose in the affidavit-in-reply what these "general facts" were on the basis of which an opinion was formed by the Corporation. The Corporation, it seems, wanted the Court to accept its ipse dixit on the point, but that, we are afraid, cannot be done. It is for the Court to decide whether the differential rates of tax were fixed by the Corporation having regard to the cost of conservancy service supplied to each class of properties and this decision can be arrived at only on the basis of the material produced before the Court. A mere assertion on the part of the Corporation is not enough. The Corporation must show by producing date before the Court that the differential rates of conservancy tax were fixed broadly in proportion to the differences in the cost of conservancy service supplied to different classes of properties. This could obviously be done only if the Corporation worked out separately the cost of supplying conservancy service to each class of properties. But that was admittedly not done by the Corporation at the time when the differential rates were fixed and even before us, no attempt was made to justify the differential rates of tax on this footing. The Corporation contended itself by merely relying on the practical difficulty of working out separately the cost of conservancy service to different classes of properties and pointed out that it was hardly possible that the Legislature could have intended that the Corporation should undertake such a difficult and almost impossible task in order to be able to fix different rates of conservancy tax for different classes of properties. We do not think this contention of the Corporation is justified. It is apparent from sec. 137 that even where power is conferred on the Commissioner to fix a special rate of conservancy tax in respect of any individual hotel, club, stable, industrial premises or other large premises, such special rate has to be fixed "with reference to the cost or probable cost of the collection, removal and disposal

by the agency of the municipal conservancy staff, of excrementitious and polluted matter from the premises". The Legislature has clearly contemplated that even in respect of an individual hotel, club, industrial premises or other large premises, the cost of supplying conservancy service can and must be calculated, if the Commissioner wants lo fix special rate of conservancy tax for such premises. If the cost of supplying conservancy service to an individual hotel, club, stable, industrial premises or other large premises can be determined, a fortiori, there is no reason why it should not be possible to determine the cost of supplying conservancy service to a class of properties. That should in fact be a much easier task than that contemplated by the Legislature in sec. 137. But that apart, no consideration of practical inconvenience can relieve the Corporation of the necessity of complying with the guiding principle laid down by the Legislature in exercise of the power conferred upon it.

[61] The Corporation sought to repel this ground of challenge urged on behalf of the petitioners by putting forward a rather ingenious contention. The Corporation contended that the classification of properties was no doubt required to be made having regard to the volume of conservancy service supplied by the Corporation, but once valid classification of properties was made in the light of this guiding principle, it was open to the Corporation to fix such rate of conservancy tax as it thought fit in respect of each class of properties and it was not necessary that such rate of conservancy tax should be related to the actual cost of supplying conservancy service to that particular class of properties. This contention is, in our opinion, wholly without substance. The power conferred on the Corporation is to fix different rates of conservancy tax for different classes of properties and it is in the exercise of this power that guidance is provided by the Legislature by saying that different rates of conservancy tax shall be fixed for different classes of properties having regard to the cost of conservancy service supplied to each class of properties. The fixation of different rates of conservancy tax is to be guided by the cost of conservancy service supplied to each class of properties and the differential rate of tax fixed in respect of each class of properties must bear relation to the cost of conservancy service supplied to that class. The cost of supplying conservancy service to each class of properties would cease to be a guiding factor if the view were taken that classification of properties may be made according to the volume of conservancy service supplied by the Corporation, but once classification of properties is made on this principle the Corporation may fix such rates of conservancy tax for

different classes as it may think fit. The rates of conservancy tax fixed by the Corporation in such a case would have no relation to the cost of conservancy service supplied and they would be wholly arbitrary and unguided. The classification of properties according to the volume of conservancy service supplied by the Corporation cannot give carte blanche to the Corporation to treat the different classes as it likes. The Corporation cannot say that though the volume of conservancy service supplied to Class A is 30 per cent and to Class B is 70 per cent of the total conservancy service, it will charge Class A only one per cent of the total cost of supplying conservancy service and throw the burden of the remaining 99 per cent on Class B. That would be naked discrimination not permitted by the statute. There is no charm in mere classification of properties. The classification of properties is for the purpose of fixing differential rates of tax and the fixation of differential rates of tax must be justified having regard to the guiding principle. The differences in the rate of tax must, therefore, be broadly proportionate to the differences in the cost of conservancy service supplied to different classes. We must of course, make it clear that when we say this, we do not insist on mathematical precision. The law does not and cannot require that the rates of conservancy tax for different classes of properties should be fixed in such a manner that the conservancy tax collected in respect of each class of properties is precisely equal to the cost of supplying conservancy service to that class. The taxing authority must, by the very nature of the function it has to discharge, have some latitude in the matter of fixation of rates of conservancy tax. But it is necessary-and that is the requirement of the statute-that there must be broad correspondence between the rates of conservancy tax fixed for different classes of properties and the cost of conservancy service supplied to them. That alone would eliminate arbitrariness in the exercise of power. Since in the present case there is nothing on the record to show that the cost of supplying conservancy service to hotels, clubs, stables, theatres or cinemas, industrial premises and other large premises was broadly three times the cost of supplying conservancy service to the other properties, so as to justify fixation of the rate of 9 per cent for the former class of properties as against fixation of the rate of 3 per cent for the latter class, the resolutions passed by the Corporation for the official years 1967-68 to 1970-71 fixing the rate of 9 per cent for the former class of properties must be held to be in disregard of the guiding principle laid down by the Legislature and hence ultra vires the proviso to sec. 129(b).

[62] Re : Ground (E) :- That takes us to the next ground of challenge against the validity of Secs. 406(2)(e) and 41 1(bb). It will be noticed from the scheme of taxation embodied in the Corporations Act and the Taxation Rules that the assessment of property taxes is

left entirely to the Municipal Commissioner who is the principal executive officer of the Corporation. The only guidance in the Corporations Act regarding assessment which is given to him is that contained in the definitions of "rateable value" and "annual letting value". It is apparent from the definitions that the process of assessment is not an easy one and in many cases is bound to be difficult and complicated. It would involve a large amount of discretion and personal judgment in determination of various questions of law as well as fact and valuable rights of citizens would depend upon a proper exercise of this function. Leaving this whole process entirely to the principal executive officer of the taxing body without any right of appeal or reference to an independent judicial forum would be clearly unreasonable. Sec. 406(1), therefore, provides for an appeal against rateable value as also against tax to a judicial forum. But clause (e) of sec. 406(2) creates a clog on the right of appeal by providing that an appeal against tax or even an appeal against rateable value, if preferred after presentation of the municipal bill, shall not be entertained, unless the amount claimed from the appellant has been deposited with the Municipal Commissioner. This requirement of deposit of the amount of tax assessed as a condition of entertainment of the appeal may, however, be dispensed with by the Judge wholly or in part and unconditionally or subject to conditions, under the proviso, if the Judge is of opinion that the deposit would cause undue hardship to the appellant. The decision of the Judge in regard to dispensing with the requirement of deposit is made appealable to the High Court by sec. 41 1(bb). The question is, whether this provision enacted in sec. 406(2)(e) read with sec. 41 1(bb) can stand the scrutiny of Article 14 of the Constitution.

[63] Prior to its amendment by sec. 10 of Gujarat Act 5 of 1970, sec. 406(2)(e) was without the proviso and it created a bar against hearing of the appeal and not against entertainment of the appeal. The constitutional validity of sec. 406(2)(e) in its unamended form came up for consideration before this Court in Special Civil Application No. 662 of 1968 and other allied petitions and by its judgment dated 27th October 1969, this Court struck down that provision as violative of Article 14 of the Constitution. In view of this decision, the learned counsel for the petitioners at one stage contended that since sec. 406(2)(e) as unamended was declared invalid by this Court, it was erased or obliterated altogether and in the absence of re-enactment, no amendment could be made to it. The amendment, if made, would be an amendment to nullity and would be ineffective. The addition of the proviso was therefore futileand did not have the effect of validating sec. 406(2)(e). This contention was however not pressed by the learned counsel for the petitioners when it was pointed out in the course of the arguments that sec. 406(2)(e) as it stood unamended was pre-constitutional legislation and, therefore, it

could not be regarded as still-born and it was only when it came into conflict with Article 14 on the commencement of the Constitution that it became void to the extent of the inconsistency by reason of Article 13(1) and consequently, if the inconsistency was removed by amendment, it would cease to be in clash with Article 14 and would begin to operate in its fullness. The only question then agitated by him was whether the amendment of sec. 406(2)(e) by the addition of the proviso had the effect of removing the inconsistency with Article 14 from which sec. 406(2)(e) as unamended suffered according to the judgment of this Court dated 27th October 1969. He contended that the constitutional infirmity pointed out by this Court in sec. 406(2)(e) as it stood prior to its amendment was not cured by the addition of the proviso and even after the amendment, sec. 406(2)(e) continued to suffer from the same constitutional infirmity which inhibited its existence prior to the amendment. To determine the validity of this contention, it is necessary to examine what was the ground on which this Court declared the unamended sec. 406(2)(e) ultra vires Article 14. The ground would be found set out in the following passage from the judgment of this Court dated 27th October 1969 :-

> "Clause (e) of sec. 406 sub-sec. (1) classifies the appellants against tax and rateable value into two classes : (1) those who deposit the amount of tax assessed by the Commissioner; and (2) those who do not, whatever be the reason for non-deposit. It then proceeds to give different treatment to the two classes. Those who belong to the former class are entitled to have their appeal heard while those who belong to the latter are not given such right and they are in effect deprived of a right of appeal. The basis of classification is the deposit of the tax, the legality or propriety of which is impugned in the appeal. The question is whether this basis has any rational nexus with the object of the provision for appeal, or, in other words, from the point of view of the object of providing an appeal, is there any reasonable justification for making this distinction for giving the right of appeal to one class and denying it to the other ? We do not think so. The object of providing an appeal is to give a remedy to an assessee against illegal, improper or excessive exaction of tax so that he can get the legality, propriety or correctness of the tax tested in a judicial forum and only such tax as may be payable according to law may be levied upon him. It is difficult to see what nexus the deposit of the tax assessed has with this object. How does the deposit of the tax in any way bear upon this object either by way of furthering it or impeding it ? The deposit of the tax is a totally irrelevant consideration so far as the securing of this object is concerned. The legality or propriety of the tax which is to be

tested in the appeal does not depend on the deposit of the tax nor does the deposit of the tax in any way facilitate the disposal of the appeal.....But the deposit of the tax which is impugned in the appeal has no relation to the object for which the appeal is provided. To emphasize this argument let us take a case where there are two appellants who own identical properties and who are assessed by the Commissioner on the same basis in respect of their properties. Suppose one of them has deposited the tax while the other has not. Though the appeals of both involve identical points and if one succeeds, the other logically must, the appeal of the appellant who has deposited tax will succeed while the appeal of the appellant who has not deposited the tax will be dismissed. Would this advance the cause of justice: would it serve the object of providing an appeal which is to enable the assessee to have the legality, propriety or correctness of the tax tested in a judicial forum so that the proper tax according to law and no more is exacted from him ?

As a matter of fact, this object would be defeated for the appellant who has not deposited the tax would not be able to upset the illegal, improper or excessive assessment made against him, not because there is no merit in his appeal but because he has not paid the tax which is illegal, improper or unjust and the propriety or legality of which is to be adjudicated upon in the appeal. It would amount to meting out unequal treatment to him though from the point of view of the appeal, there is no difference between him and the appellant who has deposited the tax. The difference between them is in relation to the feature which has no relevance to the provision for appeal. The provision for deposit of the tax as a condition of hearing of the appeal must, therefore, be held to be discriminatory and violative of the equal protection clause of the Constitution".

It will be seen from this passage that sec. 406(2)(e) as it stood prior to its amendment was held to be violative of Article 14 on the ground that it divided appellants against tax and rateable value into two classes, namely, (1) those who deposit the amount of tax assessed by the Commissioner and (2) those who do not, whatever be the reason for non-deposit and the basis of this classification, namely, deposit of the amount of tax impugned in the appeal, had no rational nexus with the object of the provision for appeal. The

object of providing an appeal being to give a remedy to an assessee against illegal, improper or excessive exaction of tax so that he can get the legality, propriety or correctness of the tax tested in a judicial forum and only such tax as may be payable according to law may be levied upon him, there was no rational basis for making a distinction between appellants who make deposit of the amount of tax assessed and appellants who do not. The deposit of the [amount of tax assessed had no relevance whatsoever to the object intended to be secured by provision of an appeal and the classification made by the unamended sec. 406(2)(e) was, therefore, arbitrary and irrational. This was the vice or infirmity from which sec. 406(2)(e) as unamended suffered and the question is, whether the addition of the proviso has made any difference. Is the vice or infirmity cured by the addition of the proviso ? We think not. The proviso does not wholly obliterate the basis of classification found by this Court to be arbitrary and irrational. It does not say that deposit of the amount of tax assessed shall be immaterial. Sec. 406(2)(e) with the proviso still insists-and indeed the provision is made more rigorous by substitution of the word "entertained" for the word "heard" in the opening part of sub-sec. (2) of sec. 406-that the amount of tax assessed must be deposited as a condition of entertainment of the appeal. Those who deposit the amount of tax shall be entitled to prefer an appeal while those who do not, shall not be so entitled. The only relaxation made by the proviso is that if, in any particular case, the Judge is of opinion that the deposit of the amount of tax will cause undue hardship to the appellant, the Judge may dispense with the deposit wholly or in part, either unconditionally or subject to such conditions as he may deem fit. The proviso seeks to exempt from the requirement of making deposit only those appellants to whom making of the deposit would cause undue hardship and such exemption may be given wholly or in part to the extent necessary for relieving such undue hardship. Where, however, making of the deposit would not cause undue hardship to the appellant, he would be governed by the main provision, in sec. 406(2)(e) and in accordance with that provision, he must deposit the amount of tax assessed against him if he wants his appeal to be entertained : if he does not, his appeal would be summarily rejected. The discrimination between appellants who deposit the amount of tax assessed and appellants who do not, still persists so for as concerns appellants who can deposit the amount of tax without undue hardship. The proviso does not get rid of the discrimination between appellants who deposit the amount of tax and appellants who do

not. The proviso merely carves out an exception from the main provision in sec. 406(2)(e) and limits the applicability of the main provision to appellants who can deposit the amount of tax without undue hardship. The requirement of deposit of the amount of tax which was originally, under the unamended sec. 406(2)(e), applicable to all appellants is now, after the addition of the proviso, confined to appellants who can deposit the amount of tax without undue hardship. The result is that the discrimination between appellants who deposit the amount of tax and appellants who do not, which is the necessary consequence of the condition requiring deposit of the amount of tax, still persists, though it is now limited to the class of appellants who can deposit the amount of tax without undue hardship. The condition requiring deposit of the amount of tax, therefore, continues to clog the right of appeal despite the addition of the proviso in sec. 406(2)(e) and since, as held by this Court in its judgment dated 27th October 1969, this condition has no relevance to the object of providing an appeal, sec. 406(2)(e) must, even after the addition of the proviso, be held to be discriminatory and violative of the equal protection clause of the Constitution. The proviso would have cured the invalidity of sec. 406(2)(e), if sec. 406(2)(e) had been declared to be unconstitutional on the ground that it discriminates between appellants who can deposit the amount of tax without undue hardship and appellants who cannot. It would have in that case obliterated the discrimination by making it possible for the latter class of appellants to exercise their right of appeal without being required to deposit the amount of tax. But that is not the discrimination struck down by this Court by its judgment dated 27th October 1969. The discrimination invalidated by this Court was between appellants who deposit the amount of tax and appellants who do not and this discrimination, as pointed out by us, is not wiped out by the proviso. The proviso does not have the effect of curing the vice of discrimination inherent in sec. 406(2)(e) and, despite the addition of the proviso, sec. 406(2)(e) continues to suffer from the same vice and must consequently be held to be invalid as being in conflict with Article 14. If sec. 406(2)(e) falls, sec. 411 (bb) which is an integral part of the scheme must also fall along with it and so also, for the same reasons which appealed to us in our judgment dated 27th October 1969 in declaring invalid a part of Rule 42 as it stood prior to its amendment, we must hold that the limitation in Rule 42 that warrant shall not issue for recovery of the amount of tax if an appeal is preferred or entertained against

the tax, is void.

[64] We, therefore, partially allow these petitions and make the rule issued in each petition absolute by making the following declarations :

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

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

(iii) Sec. 49 does not suffer from the vice of unreasonableness and is constitu tionally valid and so also is sec. 13(1) of Gujarat Act 5 of 1970.

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

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

(vi) Sec. 406(2)(e) and sec. 41 1(bb) are null and void as being in contravention of Article 14 : Rule 42 of the Taxation Rules is also ultra vires and void in so far as it provides that if an appeal is preferred or entertained against the tax, warrant shall not issue for the recovery of the amount of tax.

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

We also issue a writ of mandamus quashing and setting aside the Resolutions passed by the Corporation for the official years 1967-68, 1968-69, 1969-70 and 1970-71 to the extent to which they fix a special rate of conservancy tax at 9 per cent inter alia in respect of textile mills and factories belonging to the petitioners. We have been invited by the petitioners to quash the entries in the Assessment Books relating to the textile mills and factories belonging to the petitioners for the official years 1969-70 and 1970-71. There is no doubt that, on the view taken by us; these entries would be liable to be quashed, but we do not propose to do so in the exercise of our judicial discretion. The reason is that if we quash the entries made in the Assessment Books relating to the textile mills and factories of the petitioners on the grounds which have found favour with us, the tax for the official years 1969-70 and 1970-71 would be lost to the Corporation because no assessment can be made by the Commissioner after the expiry of the relevant official year, except in the limited class of cases falling within Rule 2IB, whereas no such drastic consequence would ensue if we do not quash these entries but leave it to the Chief Judge in the appeals preferred under sec. 406 to correct or modify the assessments on the basis of the law declared in this judgment. The Chief Judge in the appeals preferred under sec. 406 can determine the annual letting value of the mills and factories of the petitioners in accordance with the law declared by-us and the tax can be levied on the petitioners on the basis of such annual letting value. This latter alternative would do full justice to the petitioners without causing grave and undue hardship which would inevitably result to the Corporation, if the former alternative were adopted. We, therefore, refuse to grant relief to the petitioners of quashing and setting aside the entries made by the Deputy Municipal Commissioner in the Assessment Books for the official years 1969-70 and 1970-71 in regard to the textile mills and factories of the petitioners. Since the petitioners have partly succeeded and partly failed in the petitions, the fair order of costs would be that each party should bear and pay its own costs in each petition.

[65] The petitioners in all the petitions apply for leave to appeal to the Supreme Court under Articles 132 and 133(1)(c) of the Constitution in so far as our decision has gone against them. So also the Corporation and the Commissioner in all the petitions apply

for leave to appeal to the Supreme Court under Articles 132 and 133(1)(c) of the Constitution against that part of our decision which is adverse to them. The questions arising in the petitions are substantial questions relating to the interpretation of Articles 14 and 19(1)(f). of the Constitution and they affect a large number of property-owners in the City and the case in each of the petitions is, therefore, a fit one for appeal to the Supreme Court. We accordingly grant certificate to the petitioners as also to the Corporation and the Commissioner in all the petitions to appeal to the Supreme Court under Articles 132 and 133(1)(c) of the Constitution. Mr. C. T. Daru, learned advocate appearing on behalf of the petitioners in Special Civil Applications Nos. 239, 240, 241, 243, 248, 250, 252, 253 and 255 of 1970 and 1635 and 1636 of 1971 applies for interim injunction restraining the Corporation from taking any steps to recover the amount of tax for the official year 1969-70 from the petitioners in those petitions. We do not see any reason why we should grant interim injunction to the petitioners restraining the Corporation from totally recovering the amount of tax from the petitioners. There can be no doubt that, whatever be the ultimate decision in regard to the various questions raised in these petitions, tax is payable by the petitioners to the Corporation and the only question is as to the quantum of the tax. 'We think it would be a fair order to make that the petitioners in these petitions should pay to the Corporation within three weeks from today the following amounts shown against their respective names towards part payment of the amount of tax which may ultimately be found due and payable by them to the Corporation.

S.No. Name Amount 1 The Sarangpur Cotton Mfg. Co. Ltd. No. 2. 1,20,930-04 2 The Aryodaya Spg. & Wvg. Mills Co. Ltd. 80,429-25 3 The Vijay Mills Co. Ltd. 93,784-68 4 The Girdhardas Harivallabhdas Mills Co. Ltd. 35,267-83 5 The Aryodaya Gng. & Mfg. Co. Ltd. 72,148-89 6 The Sarangpur Cotton Mfg. Co. Ltd. No. 1. 45,607-92 7 The Bihari Mills Co. Ltd. 51,727-50 8 The Bhalakia Mills Co. Ltd. 55,694-10 9 The Silver Cotton Mills Co. Ltd. 52,102-64

10 11 The Manekchowk & A'bad Mills Co. Ltd. The Kaiser-I-Hind Mills Co. Ltd. 69,700-35 48,407-80

These amounts have been calculated on the basis of the formula which invaded by the Supreme Court while granting interim relief to the was evolved by me which came before the through their counsel Mr. C. T. Daru Supreme respective amounts shown against their names Corporation within three weeks from today without insisting on presentation of any bills or demand notices and they will not make any application to this Court or to the Supreme Court for interim injunction restraining the Corporation from recovering these amounts from the petitioners. So far as concerns the

balance of the tax which may be found due and payable by the petitioners in these petitions to the Corporation for the official year 1969-70, the petitioners are agreed that in case the Corporation is restrained by an interim injunction from taking any steps to recover the amount of tax assessed against the petitioners except to the extent of the aforesaid amounts shown against their respective names, the petitioners will pay interest on such balance of the tax at the rate of 12 per cent per annum from today up to the expiration of the period for which the interim injunction is granted. We, therefore, in view of this statement made by the petitioners in these petitions through their counsel Mr. C. T. Daru, grant an interim injunction restraining the Corporation from proceeding to recover the amount of tax assessed against the petitioners for the official year 1960 -70 except to the extent of the aforesaid amounts shown against the respective names of the petitioners and direct that this interim injunction shall endure only upto 22nd January 1972.

Orders accordingly.