IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.21981 of 2013 (O&M)
Date of Decision : May 11, 2017

KRBL Limited ---Petitioner

Versus

The State of Punjab and others ---Respondents

Coram: **Hon'ble Mr. Justice Rajesh Bindal**
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Rajiv Atma Ram, Senior Advocate with
Mr.Arjun Partap Atma Ram, Advocate for the petitioner
in CWP No.21223 of 2013.
Mr.Sandeep Goyal, Advocate for the petitioner (s) in
CWP Nos.21981, 22433 of 2013 and 19429 of 2015.

Mr.Surjeet Bhadu, Advocate for the petitioner
in CWP No.11645 of 2015 and
Mr.Dixit Garg, Advocate for Mr.Aman Bansal, Advocate
for the petitioner in CWP No.23009 of 2013.

Ms.Radhika Suri, Additional Advocate General, Punjab with
Ms.Rinku Dahiya, Advocate for the State.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of CWP Nos.21223, 21981, 22433 and 23009 of 2013, CWP Nos.11645 and 19429 of 2015, as all these petitions raise common issues.

1. CWP No.21223 of 2013 has been filed by Punjab Un-aided Technical Institutions Association, which is a registered Association, running educational institutions in the State of Punjab.

2. CWP No.21981 of 2013 has been filed by KRBL Limited, a company incorporated under the provisions of the Companies Act, 1956.

3. CWP No.22433 of 2013 has been filed by M/s Derabassi Industries Association, which is a registered Society having number of

members engaged in different industrial activities in District Mohali.

4. CWP No.23009 of 2013 has been filed by the Sangrur District Industrial Chamber, which is a registered body association of Industrial Units of District Sangrur.

5. CWP No.11645 of 2015 has been filed by M/s Gillanders Arbuthnot & Co. Ltd., which is located at village Akbarpur, District Sangrur.

6. CWP No.19429 of 2015 has been filed by M/s Khanna Paper Mills Limited, Amritsar, which deals in manufacturing of quality paper and recycling of waste paper as the feedstock for domestic consumption.

7. In all these petitions the notification dated 28.2.2013 has been impugned, vide which tax has been imposed on institutions and buildings as per floor area without taking into consideration any factor other than the location of the building. The ground of challenge to this notification issued in exercise of powers under sub-section (1) of Section 3 of the Punjab (Institutions and other Buildings) Tax Act, 2011 (for short 'the 2011 Act') is that it is discriminatory and violative of Article 14 of the Constitution as it treats unequals, equally. Besides, it is contrary to the mandate of this court in **KRBL Limited vs. The State of Punjab,** 2013(2) RCR(Civil) 58.

8. For disposal of the cases, the facts are being taken from CWP No.21981 of 2013.

9. The petitioner is a company incorporated under the Companies Act, 1956. It is a manufacturer of rice and sells Basmati Rice throughout the Country. It also exports rice. It has set up rice sheller plant at village Bhasur, Dhuri, Distt. Sangrur. The plant of the petitioner is situated outside

the municipal limits and has a covered area of 9,00,000 sq. ft.

10. The petitioner and some others had earlier filed writ petitions assailing the constitutional validity of Section 3 of the 2011 Act as being ultra vires to Articles 13, 14 and 265 of the Constitution of India in so far as thereunder tax was chargeable based only on covered area of the institution or building, irrespective of other considerations like kind of construction, location or the user etc. They had also challenged the notification dated 2.2.2011 issued in exercise of powers under Section 3(1) of the 2011 Act whereby the State Government had specified the rate of tax at ₹ 1/- per square feet of the covered area of the institution or building, as the case may be.

11. It was argued that Section 3 of the 2011 Act is violative of Article 14 of the Constitution inasmuch as it treats un-equals as equals as all buildings having a floor area of 500 square feet have been subjected to the levy of same rate of tax. It was argued that all buildings cannot be treated alike as their time of construction would be different and so the quality of construction, building material used, and the location besides numerous other factors. Those located in posh areas of the cities cannot be equated with those situated in a remote part of the State. Hence, levying a uniform tax based only on floor area irrespective of the use, situation, construction, development and location of such institution or building would be arbitrary and violative of Article 14 of the Constitution.

12. This Court in its judgment in **KRBL case** (supra) held that Section 3 of the 2011 Act was not unconstitutional. It noted that in Section 3 of the 2011 Act, the legislature has merely prescribed the maximum cap of

the tax at ₹ 10/- per sq. feet of covered area of an institution or building to prevent misuse of taxation power by the delegatee, who could determine the actual rate of tax depending upon relevant factors. However, the notification dated 02.02.2011, whereby the State Government exercising powers under Section 3(1) of the 2011 Act had specified the rate of tax at ₹ 1/- per sq. feet of covered area of the institution or building was held to be discriminatory and quashed.

13. Sh. Arjun Partap Atma Ram and Sh. Sandeep Goyal, learned counsels for the petitioners have argued that the evil of the 2011 notification has not been remedied in the 2013 notification. They have argued that in KRBL's case (supra), this Court had specifically noted that in enacting Section 3 and not prescribing the actual rate of tax but only fixing the maximum rate of tax, the legislature had left it to the State Government to notify different rates for different buildings or institutions, which were required to be determined keeping in view the factors like (i) the location of the building (ii) nature of its user (iii) its proximity to nearby urban area (iv) the commercial potentiality of building (v) the estimated rental value of the building (vi) the cost of construction incurred on such building and (vii) the value of the land where such buildings or institutions are set up.

14. They argued that as per ratio of the KRBL's case (supra), the above listed factors are required to be taken into consideration, which necessarily would result in notifying different rates for different buildings keeping in view these factors. In the impugned notification, the only factor taken into consideration is the location of the building, which does not meet the requirement for sustaining the validity of the imposition as per the

decision of this Court in KRBL's case (supra) and retains the vice of discrimination. They further argued that the State itself was conscious of the infirmities in the notification and hence, issued a modified notification on 20.02.2015 in which the levy of tax per square feet per annum on institutions and buildings was to be calculated on the basis of multiple factors including location of the building; nature of usage (Commercial, Institutional including Hotel, Marriage Palaces, Hospitals, Industrial and other purposes); land value factor (collector rate per acre); type of building and cost of construction of building factors, Rental Value Factor etc.

15. Reliance was placed on various decisions of Hon'ble the Supreme Court, namely **K.T. Moopil Nair v. State of Kerala,** (1961) 3 SCR 77, **State of Kerala v. Haji K. Kutty Naha,** (1969) 1 SCR 645, **Lokmanya Barsi Vs. Barsi Borough Municipality** AIR 1961 SC 1358, ***New Manek Chowk Spg. & Wvg. Mills v. Ahmedabad Municipality, (1967) 2 SCR 679*** to stress that imposing a uniform rate of tax qua land or buildings without taking into consideration their dissimilarities in value, location, profitability etc. would fall foul of Article 14 of the Constitution.

16. In the written statement filed on behalf of the respondent-State, the levy is sought to be justified. It is stated that in consonance with the aforesaid direction of this Court in KRBL case, issue regarding chargeable rate for institutional and building tax to be determined on the basis of reasonable classification of buildings was deliberated with the Department of Excise & Taxation Department considering various distinguishing factors such as location of building, nature of its user, its proximately to the nearby urban areas, commercial potentiality of the buildings, estimated rental value

of the buildings, cost of construction incurred on such buildings and the value of land where such buildings or institutions have been set up. After due consideration, it was resolved that in order to classify the institutions and buildings with respect to the location, commercial usage, proximity to any urban area it would be appropriate that the entire State of Punjab may be divided into 9 zones for determining the rate for imposition of institutional and building tax which should be the same as those classified for the levy of Change of Land Use charges, EDC and Licence Fee. As regards, other factors envisaged by the Court i.e. rental value of the building, cost of construction etc., it was felt that it would be extremely difficult to have such a classification and the same would lead to grant of indiscriminate power to the assessing authorities and there would be practical problems in implementing the same. It is further pointed out that by the Act only such buildings or institutions have been taxed which are predominantly meant for commercial/business purpose. As per Section 2(c) buildings being used exclusively for school upto Senior Secondary Level, or for residential purposes, cattle shed or poultry sheds or for godowns for storing wheat or paddy or rice and buildings of the State Government and hospitals run by charitable trusts or societies are already exempted from the levy of this tax. The impugned notification declaring the rates of institutional tax in different cities and towns in the State of Punjab makes a reasonable classification based on location of such buildings/institutions.

17. It is further stated that with the increased facility of transportation and the unavailability of sufficient space within city limits, the commercial activities, which are sought to be taxed under the Act, have

shifted outside the municipal limits for various considerations and thus prescribing different rates of tax on the basis of status of cities and location of buildings, cannot be said to be discriminatory. In fact change of land use charges, EDC and Licence Fee have earlier been levied on similar basis.

18. Ms. Radhika Suri, Ld. Additional A.G. on behalf of the State raised the following contentions:

(i) The impugned notification had classified institutions and buildings based on their location in nine different zones which is sufficient.

(ii) Subjecting all buildings in one area to one tax is not discriminatory.

(iii) Classification need not be perfect. As long as there is a rational basis for the classification even one factor may be enough- in this case location .

(iv) In taxation matters the legislature enjoys greater latitude.

Heard learned counsel for the parties and perused the record.

19. The 2011 Act is an Act *"to provide for levy and collection of tax on certain institutions and buildings situated outside the municipal areas in the State of Punjab and for matters connected therewith or incidental thereto."*

20. Section 2 of the 2011 Act defines various words and phrases including 'building', 'institution', 'municipal area', 'occupier', 'owner' etc. The expressions relevant for our purpose are reproduced below:-

> *"2 (c).* ***'building'*** *means any construction or part of a construction or any other structure, whether of masonry,*

bricks, wood, mud, metal or other material, the covered area of which is more than five hundred square feet, which is being used or intended to be used for commercial, industrial, fun and frolic, amusement park, water park, entertainment, club, recreation, hotel, dhaba or other such like purposes, including any garage, godown, shopping mall, multiplex, marriage palace, showroom, and which is situated outside the municipal area, but does not include any building, being used exclusively for school upto Senior Secondary Level, or residential purpose, cattle shed or poultry shed or for godowns for storing wheat or paddy or rice of the State Government;

xxx xxx xxx

(f) ***'institution'*** *means an institution, other than the school upto Senior Secondary Level, which is imparting education of any kind, and includes nursing homes, hospitals, universities and colleges (including technical, vocational, professional and medical), situated outside the municipal area;*

(g) ***'municipal area'*** *means the territorial area of a municipality, specified or notified by the State Government under the Punjab Municipal Act, 1911 or the Punjab Municipal Corporation Act, 1976, as the case may be......."*

The charging Section 3 is as follows:

"3. (1) Subject the provisions of this Act, there shall be levied a tax on the institutions and buildings at such rate, not exceeding rupees ten per square foot of the covered area of the institution or building, as the case may be, as may be specified by the State Government by notification in the Official Gazette from time to time.

(2) The tax levied under sub-section (1) shall be paid on or before the 20th day of June of the financial year by the owner or the occupier, as the case may be...."

By this Act, tax is levied and collected on certain buildings and institutions situated outside the municipal areas in the State of Punjab. Under this Act the term 'building' means any construction or structure, whether of masonry, bricks, wood, mud, metal or other material of covered area of more than five hundred square feet, which is being used or intended to be used for commercial, industrial, fun and frolic, amusement park, water park, entertainment, club, recreation, hotel, dhaba or other such like purposes, including any garage, godown, shopping mall, multiplex, marriage palace, showroom, and which is situated outside the municipal area. However any building, being used exclusively for school up to Senior Secondary Level, or residential purpose, cattle shed or poultry shed or for godowns for storing wheat or paddy or rice of the State Government are excluded from this definition. The term 'institution' means an institution, which is imparting education of any kind (other than the school upto Senior Secondary Level). It also includes nursing homes, hospitals, universities and colleges (including technical, vocational, professional and medical), situated outside the municipal area.

21. It is clear that under the Act, this tax is leviable only on buildings which are used for commercial, industrial, amusement or other business purposes. It is also leviable on educational institutions, nursing homes, hospitals, colleges, universities etc. Schools up to Secondary level, buildings used for residential purpose or those used for cattle shed or poultry shed or for godowns for storing wheat or paddy or rice of the State Government are not to be taxed thereunder. The legislative intent discernible from the Act, thus, is that the tax is leviable on buildings used for

commercial and profit making purposes.

22. In the 2011 notification which was quashed in KRBL's case (supra), a uniform rate of tax at rupee one per square foot of the covered area of the institution or building was fixed.

The impugned **Notification dated 28.2.2013** reads as under:

"GOVERNMENT OF PUNJAB
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
(HOUSING II BRANCH)
NOTIFICATION
The 28th February 2013

No. S.O.14/P.A.9/2011/S.3/2013.-*In supersession of Government of Punjab, Department of Housing and Urban Development, Notification No. S.O. 8 / P.O. 1/2011 / S.3 / 2011, dated the 2nd February 2011 and in pursuance of the provisions of sub-section (l) of Section 3 of the Punjab (Institutions and other Buildings) Tax Act, 2011 (Punjab Act No.9 of 2011), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to specify the rate of tax per square foot in a financial year, to be levied on Institutions and Buildings, as specified in the Table, given below namely:-*

TABLE

Sr.No.	*ZONE*	*Rate of Tax*
1.	*Outside M.C. Limits of Ludhiana upto 15 Kms*	*Rupee 1.00 per Square Foot*
2.	*Outside M.C.Limits of Jalandhar upto 10 Kms*	*Rupee 1.00 per Square Foot*
3.	*Outside M.C.Limits of Amritsar, Patiala, Khanna, Rajpura, Mandi Gobindgarh, Sirhind and Phagwara upto 5 Kms.*	*Rupee 1.00 per Square Foot*
4.	*Outside M.C. Limits of Bathinda, Moga, Batala, Pathankot, Barnala, Malerkotla, Morinda, Hoshiarpur upto 5 Kms*	*Rupee 0.90 per Square Foot*
5.	*Outside M. C. Limits of Sangrur, Sunam, Nabha, Faridkot, Kotkapura, Ferozepur, Malout, Abohar,*	*Rupee 0.90 per Square*

	Sri Muktsar Sahib, Kapurthala, Sahid Bhagat Singh Nagar, Roopnagar, Tarn Taran, Gurdaspur, Samana, Jagraon, Mansa, Lalru, Kurali upto 3 Kms	*Foot*
6.	*Outside M.C.Limits of NH-1 upto 2 Kms on both sides, Outside any potential zone all other NH (except NH1)/ SH/ Scheduled Roads upto 1 Km both sides, any potential zone.*	*Rupee 1/- per Square Foot*
7.	*Master Plan Area of S.A.S.Nagar, Mullanpur, Zirakpur (Outside M.C.Limits)*	*Rupee 1/- per Square Foot*
8.	*Master Plan Area of Kharar, Dera Bassi, Banur (Outside M.C.Limits)*	*Rupee 1/- per Square Foot*
9.	*Rest of Punjab (Outside M.C.Limits)*	*Rupee 0.80 per Square Foot*

Note: I.- In case an institution or a building falls in more than one zone, in that case the rate of tax of such institution or building, shall be of that zone, which is higher, out of the aforesaid zones.

II.- In case an institution or a building is constructed during the mid of a financial year, in that case the tax shall be charged on prorata basis. "

23. As per this notification, the rate of tax is specified per square foot for a financial year. For the purpose of levy of the tax, the entire State is divided into nine zones based on the location within a particular distance outside the Municipal Committee limits. For institutions and buildings situated outside M.C. Limits of Ludhiana upto 15 Kms the rate of tax is ₹ 1.00 per Square Foot. For areas outside M.C.Limits of Jalandhar upto 10 Kms again the rate of tax is ₹ 1.00 per Square foot. For institutions and buildings situated outside M.C.Limits of Amritsar, Patiala, Khanna, Rajpura, Mandi Gobindgarh, Sirhind and Phagwara upto 5 Kms. the rate of tax is ₹

1.00 per Square foot. For institutions and buildings situated outside M.C. Limits of Bathinda, Moga, Batala, Pathankot, Barnala, Malerkotla, Morinda, Hoshiarpur upto 5 Kms the rate is ₹ 0.90 per Square Foot. For the institutions and buildings situated outside M. C. Limits of Sangrur, Sunam, Nabha, Faridkot, Kotkapura, Ferozepur, Malout, Abohar, Sri Muktsar Sahib, Kapurthala, Sahid Bhagat Singh Nagar, Roopnagar, Tarn Taran, Gurdaspur, Samana, Jagraon, Mansa, Lalru, Kurali upto 3 Kms the rate is ₹ 0.90 per Square Foot etc. For institutions and buildings outside the M.C. Limits in the rest of Punjab the rate is ₹ 0.80 per square foot.

24. From the notification, it is clear that the rate of tax is not uniform irrespective of location of the institution or building. Depending on the location of the building or institution it varies from ₹ 0.80 per square foot to ₹ 1.00 per square foot. There are eight different zones with rates of tax specified against each. Each zone after listing the municipality/ municipalities also specifies the distance outside the Municipal limits up to which the tax indicated therein would be applicable. The distance appears to have been fixed taking note of the expansion/urbanization/ development beyond the municipal limits. It is longest (15 kms.) in the case of Ludhiana where the city has expanded much beyond the municipal limits. It is 3 kms in case of smaller municipalities mentioned as Serial No.5 of the notification. Similarly, the rate of tax is highest in case of the more important municipalities and lesser in case of the smaller municipalities. Sr. No.9 covers all the areas outside the municipal limits which do not find mention from Sr. Nos.1 to 8, where the rate is of ₹ 0.80 per square foot, which is the lowest.

25. As Ld. Counsel for the petitioners have argued that this notification cannot sustain in the light of the decision in KRBL's case (supra), it is necessary to refer to that case in some detail. In KRBL's case, Section 3 of the 2011 Act was upheld noticing that therein only the maximum rate of tax had been fixed. It was observed that as per Section 3 it was left to the State Government to notify different rates for different 'buildings' or 'institutions' which must be determined keeping in view the factors like:- (i) the location of the building; (ii) nature of its user; (iii) its proximity to the nearby urban area(s); (iv) the commercial potentiality of the building(s); (v) the estimated rental value of the building(s); (vi) the cost of construction incurred on such buildings, and (vii) the value of the land where such buildings or institutions are set up etc. It was stressed the the legislative policy underlying Section 3 is not to impose a uniform tax on all buildings and institutions.

26. The following observations in this case were referred to by Ld. Counsel for the petitioners:

> *"39) Keeping in view the sublime features of 2011 Act (Punjab Act) briefly noticed above, it does appear to us that the evil of inbuilt discrimination embedded in Section 4 of the Kerala Act, has been effectively cured and eliminated with the enactment of Section 3 of the 2011 Act (Punjab Act). We say so for the reasons that the Legislature has merely prescribed the maximum cap of Rs.10/- per square feet of the covered area of an 'institution' or 'building' to prevent the misuse of taxation power by the Subordinate Legislation to whom the Legislature thought it appropriate to delegate the authority to determine the actual rate of tax which may, in a given case, vary from single paisa to Rs.10/- per sq. ft. depending upon the relevant*

factors, some of which have been illustrated by the Apex Court in Kerala's case.

40) The State Legislature, in other words, has chosen not to prescribe the actual rate of tax to be levied as was done in Kerala's case. Rather, it has consciously decided to fix only the maximum rate of tax, leaving it for the State Government to notify different rates for different 'buildings' or 'institutions' which must be determined keeping in view the factors like:- (i) the location of the building; (ii) nature of its user; (iii) its proximity to the nearby urban area(s); (iv) the commercial potentiality of the building(s); (v) the estimated rental value of the building(s); (vi) the cost of construction incurred on such buildings, and (vii) the value of the land where such buildings or institutions are set up etc. The Legislature, while prescribing no minimum rate of tax but a maximum cap thereupon, has thus eliminated the scope of arbitrary or discriminatory exercise of power by its delegate. The fact that the charging Section of the Punjab Act is not a statistic provision with fixed rate of tax leviable on the 'buildings' or 'institutions', completely erases the element of 'inequality' and 'arbitrariness' from Section 3 of the 2011 Act.

41) Had it been a case where the Legislature had vested with no discretion with the delegate to vary the rate of tax, even if the relevant factors, some of which have been illustrated by us in the preceding para of this order may warrant so, Section 3 of the Act would have suffered the same incurable disabilities as were detected by the Supreme Court in Section 4 of the Kerala Act or in the provisions considered in other cited decisions where the building tax was levied on 'floorage basis' over-looking the sharp distinction and intelligible classification between one building and the another. The legislative policy of the 2011 Act not to levy a uniform tax on all the buildings irrespective of distinguishable features, draws full support from *the 'reasonable classification' of such buildings as is writ large from the inbuilt import of Section 3 (1) of the 2011 Act."*

While upholding the validity of Section 3, the Court held that the notification dated 2.2.2011, whereby, the State Government had specified a uniform rate of ₹ 1/- per square feet of the covered area of the institution or building could not be sustained because as per it uniform rate had been fixed without taking note of (i) the location of the building; (ii) nature of its user; (iii) its proximity to the nearby urban area(s); (iv) the commercial potentiality of the building(s); (v) the estimated rental value of the building(s); (vi) the cost of construction incurred on such building(s), and (vii) the value of the land where such buildings or institutions have been setup etc. In this context, it was observed as under:

"44) There can indeed be no doubt that irrespective of (i) the location of the building; (ii) nature of its user; (iii) its proximity to the nearby urban area(s); (iv) the commercial potentiality of the building(s); (v) the estimated rental value of the building(s); (vi) the cost of construction incurred on such building(s), and (vii) the value of the land where such buildings or institutions have been setup etc., the State Government has chosen to fix a uniform rate of tax @ Re.1/- per square feet of the 'covered area'. It simply means that the evil which the Legislature successfully prevented from entering into and hurting the doctrine of equality embodied in Section 3 (1) of the 2011 Act, has been injected through backdoor entry by the Executive in exercise of its delegated powers. The notification also suffers from the disability of unreasonable classification as it sweeps everyone with same broom. Conversely, it treats unequals as equals in total disregard to the principles laid down by the Supreme Court in Kerala's case. The notification

dated 2.2.2011 thus neither satisfies the test of 'equality' nor is it consistent with Section 3 (1) of the 2011 Act. The notification is full of the sin of discrimination and it must take toll for its sins."

27. Relying upon the aforesaid paragraphs, Ld. Counsel for the petitioners stressed that unless the notification levying the tax takes note of all the factors enumerated therein it cannot be held to be valid. Instead of fixing the rate of tax taking into consideration all these factors, the impugned notification has only taken note of location, that also dividing the entire State into only 9 different zones, with only a slight variation in the rates of tax for the different zones. Hence, this notification suffers from the same infirmity as the earlier one, which was quashed.

28. We are unable to agree with the Ld. Counsel for the petitioners that unless the rate of tax is fixed taking into consideration all the different factors listed in the KRBL's case (supra), the tax must necessarily be held to be discriminatory. Judgements cannot be read as a statute. The observations in any judgement have to be considered to find out the ratio thereof which alone is binding. In that light, the factors which are referred to in the KRBL judgment are only illustrative of the considerations which may be relevant while deciding on the measure of tax to be imposed on buildings and institutions. Buildings may be taxed differently based on these considerations. These factors do not exhaust the list of distinctions between buildings nor can it be argued that unless all these considerations have entered into determination the tax must necessarily be held to be discriminatory. The ratio of KRBL's case (supra) as indeed the ratio of the different cases of the Supreme Court on the subject is that the tax laws are

not immune from challenge under Article 14 and where the tax treats unequals as equals then the levy would be discriminatory. But any challenge to a taxation measure on the ground of being discriminatory and violative of Article 14 of the Constitution, has to decided in the light of the consistent view of the Supreme Court that in the field of taxation the legislature has an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. And that mere uniformity of the imposition does not of itself lead to a conclusion that the tax is discriminatory.

Principles applicable in judging constitutionality of a taxation measure:

29. At the outset, it would be necessary to refer to a few decisions of the Supreme Court on this aspect.

30. In **Twyford Tea Co. Ltd. v. State of Kerala,** (1970) 1 SCC 189**,** the Supreme Court outlined the principles to be applied in adjudging the challenge to tax laws based on Article 14. It was observed:

> ***"15****. We may now state the principles on which the present case must be decided. These principles have been stated earlier but are often ignored when the question of the application of Article 14 arises. One principle on which our Courts (as indeed the Supreme Court in the United States) have always acted, is no where better stated than by Willis in his "Constitutional Law" p. 587. This is how he put it:*
>
> > *"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 this Court in East Indian Tobacco Co. v. State of A.P., at p. 409. Applying it, the Court observed:*
>
> > *"If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."*
>
> *This indicates 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 rate or rates applicable. If production must always be taken into account there will have to be a settlement for every year and the tax would become a kind of income tax."*

In **R.K. Garg v. Union of India,** (1981) 4 SCC 675, the Supreme Court again emphasized the wide discretion enjoyed by the Legislature in taxation matters as under:

> **"*8.*** *Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas*

where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in Morey v. Doud where Frankfurter, J., said in his inimitable style:

> *"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."*

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in Secretary of Agriculture v. Central Roig Refining Company be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground *for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."*

The same principle was reiterated in **Kerala Hotel and Restaurant Assn. v. State of Kerala,** (1990) 2 SCC 502, as under:

"24. *The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well. It cannot be doubted that if the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker sections of society, that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause."*

In **P.M. Ashwathanarayana Setty v. State of Karnataka,** 1989 Supp (1)

SCC 696, the Supreme Court reviewed earlier decisions on the point and emphasized the principles as under:

> ***"79.*** *The problem is, indeed, a complex one not free from its own peculiar difficulties. Though other legislative measures dealing with economic regulation are not outside Article 14, it is well recognised that the State enjoys the widest latitude where measures of economic regulation are concerned. These measures for fiscal and economic regulation involve an evaluation of diverse and quite often conflicting economic criteria and adjustment and balancing of various conflicting social and economic values and interests. It is for the State to decide what economic and social policy it should pursue and what discriminations advance those social and economic policies. In view of the inherent complexity of these fiscal adjustments, courts give a larger discretion to the legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways. If two or more methods of adjustments of an economic measure are available, the legislative preference in favour of one of them cannot be questioned on the ground of lack of legislative wisdom or that the method adopted is not the best or that there were better ways of adjusting the competing interests and claims. The legislature possesses the greatest freedom in such areas. The analogy of principles of the burden of tax may not also be inapposite in dealing with the validity of the distribution of the burden of a "fee" as well.*
>
> ***80.*** *This Court in East India Tobacco Co. v. State of Andhra Pradesh referred to with approval the following passage in Rottschaefer's "Constitutional Law", p. 668:*
>
> > *"The decision of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes*

> *so long as it refrained from clear and hostile discrimination against particular persons or classes."*

81. *The legislature has to reckon with practical difficulties of adjustments of conflicting interests. It has to bring to bear a pragmatic approach to the resolution of these conflicts and evolve a fiscal policy it thinks is best suited to the felt needs. The complexity of economic matters and the pragmatic solutions to be found for them defy and go beyond conceptual mental models. Social and economic problems of a policy do not accord with preconceived stereotypes so as to be amenable to predetermined solutions. In State of Gujarat v. Ambica Mills Ltd. this Court observed: (SCC pp. 679, 680, 677, 678—paras 71, 72, 65, 67 and 64 respectively)*

> *"...The court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on the particular needs and specific difficulties of the community ... which are beyond the easy ken of the court, ... and which the legislature alone was competent to make. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification as irrational....*
>
> *...The question whether, under Article 14, a classification is reasonable or unreasonable must, in the ultimate analysis depend upon the judicial approach to the problem.... The more complicated society becomes, the greater the diversity of its problems and the more does legislation direct itself to the diversities.... In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not official deference to legislative judgment. The courts have only the power to destroy but not to reconstruct. When these are added to the complexity of economic regulation, the*

> *uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events, self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.*
>
> *Laws regulating economic activity should be viewed differently from laws which touch and concern freedom of speech and religion, voting, procreation, rights with respect to criminal procedure, etc... judicial deference to legislative judgment in instances of economic regulation is explained by the argument that rationality of a classification depends upon local conditions about which local legislative or administrative bodies would be better informed than a court."*

82. *The lack of perfection in a legislative measure does not necessarily imply its unconstitutionality. It is rightly said that no economic measure has yet been devised which is free from all discriminatory impact and that in such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of criticism, under the equal protection clause, reviewing fiscal services. In G.K. Krishnan v. State of Tamil Nadu this Court referred to, with approval, the majority view in San Antonio Independent School District v. Rodriguez speaking through Justice Stewart: (SCC p. 389, para 38)*

> *"No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection clause."*

and also to the dissent of Marshall, J. who summed up his conclusion thus: (SCC p. 389, para 38)

> *"In summary, it seems to me inescapably clear that this Court has consistently adjusted the care with which it will review State discrimination in light of the constitutional significance of the interests affected and the invidiousness of the particular classification. In the context of economic interests, we find that discriminatory State action is almost always sustained, for such interests are generally far removed from constitutional guarantees. Moreover, (t)he extremes to which the court has gone in dreaming up rational bases for State regulation in that area may in many instances be ascribed to a healthy revulsion from the court's earlier excesses in using the Constitution to protect interests that have more than enough power to protect themselves in the legislative halls."*

83. *The observations of this Court in ITO v. K.N. Takim Roy Rymbai made in the context of taxation laws are worth recalling: (SCC p. 923)*

> *"(T)he mere fact that a tax falls more heavily on some in the same category. is not by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14."*

It is in the light of the aforesaid principles that the validity of the impugned notification has to be adjudged.

Cases relied on by the petitioner are distinguishable :

31. Apart from KRBL's case (supra), Ld. Counsel for the petitioner

based his case primarily on the decisions of the Supreme Court in **K.T. Moopil Nair** and **Haji K. Kutty cases.**

32. In **K.T. Moopil Nair's case** the impugned legislation was the Travancore-Cochin Land Tax Act, 1955. As per the charging Section 4 of that Act, there was to be levied in respect of all lands in the State, of whatever description and held under whatever tenure, a uniform rate of tax to be called the basic tax. As per Section 5 the rate of the tax was raised to ₹ 2/- per acre (two pies per cent of land per annum). As per Section 7, the Act was not applicable to lands held or leased by the Government or any land or class of lands which the Government may exempt from the provisions of the Act.

33. To bring home full impact and significance of the legislation, the Court referred to the allegations in Writ Petition No.42 of 1958. The petitioner therein owned forests which were governed by the Madras Preservation of Private Forests Act, 1949. Because of the conditions and restrictions imposed thereunder including on the cutting of trees the petitioner could not fully exploit the forest wealth in his forest. The petitioner earned an income of ₹ 3,100/- from the lease of the forests, but was served with a provisional assessment notice of ₹ 50,000/- per annum.

34. The Court held that the Act was discriminatory as well as confiscatory. To test the validity of the Act, the Court considered a hypothetical case of number of persons owning and possessing the same area of land. In the case of one person the land may be an arid desert yielding nothing. The second one could raise some crop after a disproportionately large investment of labour and capital but get no real

income. The third one may be able to make the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth may make large profits, the land being fertile and capable of yielding good crops. The fourth category would easily be able to bear the burden of the tax. The third one may be just able to bear the tax. The first and the second one would have to pay from their own pockets, if they could afford the tax. On their inability to pay, the property would be liable to be sold for realization of the public demand. The court thereby concluded that inequality is writ large on the Act.

> ***"8.*** *It is common ground that the tax, assuming that the Act is really a taxing statute and not a confiscatory measure, as contended on behalf of the petitioners, has no reference to income, either actual or potential, from the property sought to be taxed. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed, whether or not he makes any income out of the property, or whether or not the property is capable of yielding any income. The Act, in terms, claims to be "a general revenue settlement of the State" (Section 3). Ordinarily, a tax on land or land revenue is assessed on the actual or the potential productivity of the land sought to be taxed. In other words, the tax has reference to the income actually made, or which could have been made, with due diligence, and, therefore, is levied with due regard to the incidence of the taxation. Under the Act in question we shall take a hypothetical case of a number of persons owning and possessing the same area of land. One makes nothing out of the land, because it is arid desert. The second one does not make any income, but could raise some crop after a disproportionately large investment of labour and*

capital. A third one, in due course of husbandry, is making the land yield just enough to pay for the incidental expenses and labour charges besides land tax or revenue. The fourth is making large profits, because the land is very fertile and capable of yielding good crops. Under the Act, it is manifest that the fourth category, in our illustration, would easily be able to bear the burden of the tax. The third one may be able to bear the tax. The first and the second one will have to pay from their own pockets, if they could afford the tax. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realisation of the public demand. It is clear, therefore, that inequality is writ large on the Act and is inherent in the very provisions of the taxing section. It is also clear that there is no attempt at classification in the provisions of the Act. Hence, no more need be said as to what could have been the basis for a valid classification. It is one of those cases where the lack of classification creates inequality. It is, therefore, clearly hit by the prohibition to deny equality before the law contained in Article 14 of the Constitution. Furthermore, Section 7 of the Act, quoted above, particularly the latter part, which vests the Government with the power wholly or partially to exempt any land from the provisions of the Act, is clearly discriminatory in its effect and, therefore, infringes Article 14 of the Constitution. The Act does not lay down any principle or policy for the guidance of the exercise of discretion by the Government in respect of the selection contemplated by Section 7. This Court has examined the cases decided by it with reference to the provisions of Article 14 of the Constitution, in the case of Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar. S.R. Das, C.J., speaking for the Court has deduced a number of propositions from those decisions."

In **Haji K. Kutty Naha's** case (supra), the Kerala Buildings Act, 1961, was quashed on the ground of being violative of Article 14 of the Constitution. The Act extended to the whole of the State of Kerala; Section 2(*d*) defined "building" as meaning a house, out-house, garage or any other structure or part thereof whether of masonry, bricks, wood, metal, or other material. By Section 3 buildings owned by the State Government, the Central Government or any local authority and buildings used principally for religious, charitable or educational purposes or as factories or workshops were exempt from payment of tax under the Act. The tax was to be charged in respect of every building the construction of which is completed on or after March 2, 1961, and which had a floor area of one thousand square feet or more. The building tax was to be payable by the owner of the building. The Schedule to the Act set out the rates of building tax. Buildings having a total floor area of less than 1000 sq. ft. were not liable to pay tax. The liability to tax in respect of buildings having total floor area between 1000 to 2000 sq. ft. varied between ₹ 100/- to ₹ 200/-; for buildings with a floor area between 2000 to 4000 sq. ft. it varied between ₹ 400/- to ₹ 800/-; for buildings having total floor area between 4000 to 8000 sq. ft. it varied between ₹ 1200/- to ₹ 2400/-; for buildings with total floor area of 8000 to 12000 sq. ft. it varied between ₹ 3200/- to ₹ 4800/-; and in respect of buildings having total floor area exceeding 12000 sq. ft. a rate of 50 np. per sq. foot i.e. ₹ 6000/- or more per annum.

35. The Hon'ble Court noted that for determining the quantum of tax the sole test was the area of the floor of the building. The Act applied to

the entire State of Kerala, and whether the building is situated in a large industrial town or in an insignificant village, the rate of tax was determined by the floor area: it did not depend upon the purpose for which the building was used, the nature of the structure, the town and locality in which the building was situated, the economic rent which may be obtained from the building, the cost of the building and other related circumstances which may appropriately be taken into consideration in any rational system of taxation of building. It was observed*:*

> ***"5.*** *But in enacting the Kerala Buildings Tax Act no attempt at any rational classification is made by the Legislature. As already observed, the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation. They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality. This Court in a recent judgment has decided that the levy of tax in exercise of the power under Entry 49 List II of the Seventh Schedule in respect of factory buildings in a municipal area based on floor area was illegal: New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad. The Court held in that case that the method of adopting a flat rate for a floor area for determining the annual value adopted by the Corporation of Ahmedabad in exercise of the powers conferred upon it by the*

Bombay Provincial Municipal Corporation Act 49 of 1949 was against the provisions of the Act and the Rules made thereunder as well as all recognised principles of valuation for the purpose of taxation. If levy of tax in a municipal district based on floor area in respect of a factory building violates Article 14 of the Constitution when the tax is sought to be levied by the Municipal Corporation, we see no reason to uphold the tax imposed under the impugned Act when the State, in exercise of legislative authority conferred by Entry 49 List II Schedule VII, imposes liability to tax buildings solely on floor area. The vice of the Act in the present case is more pronounced than it was in New Manek Chowk Spinning & Weaving Mills case. In that case the Rules under which the tax was sought to be levied on the basis of floor area were restricted in their operation to factory buildings within the Corporation limits of Ahmedabad, whereas Act 19 of 1961 which is challenged in the present case applies to the whole State of Kerala in respect of buildings completed on or after March 2, 1961, whatever may be the nature or class of the building, the use to which it is put, materials used in its construction and the extent of profitable user to which the building may be put, its cost and its economic rental. It is unnecessary in the circumstances to consider whether imposition of a tax only on buildings constructed after March 2, 1961, and exempting buildings completed before that date may not violate Article 14 of the Constitution."

Both these cases are clearly distinguishable.

36. In **K.T. Moopil Nair's** case for all the lands in the State of Kerela other than those exempted, a uniform rate of tax @ ₹ 2 per acre had been levied irrespective of whether the land was totally barren land which even with best efforts would yield virtually nothing or it was highly

productive yielding high profits. There was a specific case before the Court where it was established that the income from the land was only ₹ 3100/- whereas the tax assessed as per the Act was ₹ 50,000/-. It was in that context the Court found the tax to be discriminatory as well as confiscatory and hence it was struck down. Such is not the case here. The kind of wide disparity in the productivity of land in an entire State as was noticed by the Supreme Court has not been shown to exist nor can it be presumed to exist in regard to buildings and institutions primarily of a commercial nature which are the subject matter of the impugned notification.

37. In **Haji K. Kutty's case**, the building tax was applicable to all buildings in the entire State (which meant house, out-house, garage or any other structure or part thereof whether of masonry, bricks, wood, metal, or other material,) except the buildings used principally for religious, charitable and educational purposes or as factories or workshops which were exempted. Residential houses were not exempt. In view of the wide diversity of the nature and kind of the buildings, the purposes of their use and their location whether in a large industrial town or a remote village and other differences noticed by the Supreme Court the tax was held to be invalid. The principle applied being that where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result. The present case however is different. By the impugned notification, the tax is applicable to buildings and institutions primarily of a commercial nature which are situated outside the municipal limits. Consequently, some of the striking differences noticed by the Supreme Court while invalidating the tax in **Haji K. Kutty's** case may not

be present here.

38. Moreover, in the impugned notification a distinction has been made and different rates have been fixed depending on their location. Higher rates have been fixed for those located outside the larger/ commercially important municipalities and lower rates on those located outside the municipal limits of smaller, less commercially developed municipalities.

39. Both these cases have also been considered by the Supreme Court in subsequent decisions and have been held as not laying down any absolute proposition that a uniform tax is necessarily discriminatory.

40. In **Twyford Tea Co. Ltd. case,** the Kerala Plantation (Additional Tax Act), 1960, and the Kerala Plantation (Additional Tax) Amendment Act, 1967 was challenged as being unconstitutional and void. The contention of the petitioners was that there was no rational classification of plantations; that unequals had been treated as equals and that a flat rate imposed upon all the plantations irrespective of their yield was arbitrary. Another argument was that some of the plantations cannot make enough profit to be able to pay tax and in their case the tax became confiscatory.

The Supreme Court negatived the contention holding as under:

> ***"9****. The contention here is that there is an uniform rate of tax per hectare which every owner of a named plantation has to pay irrespective of the extent or value of the produce and, therefore, the law imposes uniform tax burden on unequals. In our opinion this is a wrong way to look at the provisions of the Act.*

***10**. The Act, no doubt, deals with seven different kinds of plantations and imposes an uniform rate of Rs 50 per hectare but it lays down principles on which a equal treatment is ensured. In the case of cocoanut, arecanut, rubber, coffee and pepper plantations, plants capable of yielding produce are to be counted and then the hectares are determined by dividing the total number of plants by a certain figure. This is intended to equalise the different plantation for purposes of taxability. In the remaining two cases the extent of land yielding crop is itself taken as the measure for the tax because it is considered fair and just to treat one actual hectare of crop yielding plantation as equal to the other areas converted into hectares on the basis of the number of plants or trees. Differences in yield between one plantation and another having the same crop, no doubt, arise from situation, altitude and rainfall but they are not the only factors. Otherwise how is it that the same areas give different yield in different years. The respondents have given the figures of yield of Glenmari estate contiguous to Twyford estate. The produce in that estate ranges from 1427 to 1571 kilograms per hectare which is almost equal to the estates in Periyar area. The yield of Cardamom also varies similarly. In the Highland Produce Co. Ltd. the per acre yield varied from 5770 1bs. in 1965 to 26,690 1bs. in 1962. In 1961 the per acre yield was 91 1bs. and in 1962, 254 1bs. It is obvious that there are circumstances other than situation, rainfall etc. which have made the yield almost 2½ times as much.*

***11**. The Legislature thinks that Rs 50 per hectare in the case of Cardamom and Tea is reasonable levy and this is equal to other plantations. Where the crop yielding plants and trees have to be converted into hectares according to a formula. It is obvious that the Legislature has made an attempt at equalisation of tax burden for different plantations. This is not a case where barren lands have been subjected to equal tax* *with productive lands. The tax is only levied on crop yielding land in some cases where the crop may be scattered over a wide area, there is an elaborate machanism to determine the extent of the crop yielding plantation. The differences which have been pointed out may be the result of some fortuitous circumstances and even bad husbandry. The Court cannot regard the law to be discriminatory on the evidence produced in the case.*

xxx xxx xxx

***13**. Two other cases were referred to but they bear upon a different topic. In New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and The State of Kerala v. Haji K. Kutty Naha, the question was one of rating. The proposition laid down was that taking only the floor area of a building as the basis for determination of the tax was on arbitrary method when buildings must have different rental values depending upon the nature of the construction, the kind of building and the purpose for which they can be used. These were held vital considerations in the rating of buildings and could not be ignored. These cases were decided on different principles and no analogy can be found merely because equal tax was imposed in diverse conditions.*

xxx xxx xxx

***18**. What is meant by the power to classify without unreasonably discriminating between persons similarly situated, has been stated in several other cases of this Court. The same applies when the Legislature reasonably applies a uniform rate after equalising matters between diversely situated persons. Simply stated the law is this: Differences in treatment must be capable of being reasonably explained in the light of the object for which the particular legislation is undertaken. This must be based on some reasonable distinction between the* *cases differentially treated. When differential treatment is not reasonably explained and justified the treatment is discriminatory. If different subjects are equally treated there must be some basis on which the differences have been equalised otherwise discrimination will be found. To be able to succeed in the charge of discrimination, a person must establish conclusively that persons equally circumstanced have been treated unequally and vice versa..... However, in Khandige Sham Bhat v. Agricultural Income Tax Officer at p. 817 it was observed:*

> *"If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine: vide Purshottam Govindji Malai v. Shree B.N. Desai, Additional Collector of Bombay and Kunnathat Thatunni Moopil Nair v. State of Kerala. But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."*

***19**. Taking these principles into consideration we are satisfied that the law does not single out any particular plantation for hostile or unequal treatment. In fact it is nowhere proved in this case that tea has been discriminated against deliberately. As between different tea gardens, it is not possible*

> *to say that the differences in the yield is entirely due to natural circumstances and no other cause. It is, therefore, not possible to say that there is discrimination notwithstanding the uniform rate for each plantation based on the actual crop yielding area."*

41. In **Venkateshwara Theatre v. State of A.P.,** (1993) 3 SCC 677, the constitutional validity of Sections 4 and 5 of the Andhra Pradesh Entertainment Tax Act, 1939 was questioned. It was urged that under amended Section 4, a uniform rate had been prescribed for cinema theatres of a particular class situated in different parts of the same local area although the average rate of occupancy in the cinema theatres located in different parts of the same local area was not the same. Cinema theatres located in the central part of the local area would have better rate of occupancy as compared to a theatre located in a remote part and further that the occupancy in the theatre depended on various other factors which had not been taken into account. The Court rejected the challenge. The Court observed that in taxation matters there exists a wide discretion in classifying items for tax purposes so long as there is no clear hostile discrimination. It was observed:

> ***"21.*** *Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. (See: East India Tobacco Co. v. State of A.P., P.M. Ashwathanarayana Shetty v. State of Karnataka, Federation of Hotel & Restaurant Association of India v. Union of India, Kerala Hotel & Restaurant Association v. State of Kerala and Gannon*

Dunkerley and Co. v. State of Rajasthan.)"

The Court distinguished *Moopil Nair's case* and held that the case cannot be held to be laying down any broad proposition that when persons or objects which are unequal are treated in the same manner and are subjected to the same burden or liability, discrimination inevitably results. It was observed:

> "***24.*** *In K.T. Moopil Nair v. State of Kerala this Court was dealing with a law providing for imposition of uniform land tax at a flat rate without having regard to the quality of the land or its productive capacity. The law was held to be violative of Article 14 of the Constitution on the ground that lack of classification had created inequality.*
>
> ***25.*** *The said decision in K.T. Moopil Nair case has been explained by this Court in Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union in the context of challenge to the validity of Section 10 of the Payment of Bonus Act, 1965 providing for payment of a minimum bonus of 4% by all industrial establishments irrespective of the fact whether they were making profit. This Court held that the judgment in Moopil Nair case has not enunciated any broad proposition that when persons or objects which are unequal are treated in the same manner and are subjected to the same burden or liability discrimination inevitably results. It was observed:*
>
>> *"It was not said by the Court in that case that imposition of uniform liability upon persons, objects or transactions which are unequal must of necessity lead to discrimination. Ordinarily it may be predicated of unproductive agricultural land that it is incapable of being put to profitable agricultural use at any time. But that cannot be so predicated of an industrial*

establishment which has suffered loss in the accounting year, or even over several years successively. Such an establishment may suffer loss in one year and make profit in another." (SCR p. 35)

***26.** It was further observed:*

"Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law." (SCR p. 36)"

42. The Court upheld the classification of theatres based on the local area in which they were situate. It was held that merely because the classification was not perfect and there was scope for further classification cannot be a ground to strike down the classification.

"*29.* *In the instant case, we find that the legislature has prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned, air-cooled, ordinary (other than air-conditioned and air-cooled), permanent and semi-permanent and touring and temporary. The theatres have further been categorized on the basis of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre in each local area. We do not think that such a contention is well founded.*

***30.** In relation to cinema theatres it can be said that the* *attendance in the various cinema theatres within a local area would not be uniform and would depend on factors which may vary from time to time. But this does not mean that cinema theatres in a particular category of local area will always be at a disadvantage so as to be prejudicially affected by a uniform rate as compared to cinema theatres having a better location in the same local area. It is, therefore, not possible to accept the contention that the impugned provisions are violative of the right to equality guaranteed under Article 14 of the Constitution on the basis that unequals are being treated equally."*

In **State of Bihar v. Sachchidanand Kishore Prasad Sinha,** (1995) 3 SCC 86, the question was as to the validity of clauses (*a*) and (*c*) of sub-rule (1) of Rule 3 of the Assessment of Annual Rental Value of Holding Rules, 1993 (hereinafter referred to as "Assessment Rules") framed by the State Government under Section 227 read with Section 130 of the Patna Municipal Corporation Act and the two notifications issued by the Patna Municipal Corporation under Rules 3 and 5 of the said Rules. The High Court had quashed the same holding them to be violative of Article 14 of the Constitution of India.

43. As per the rules in force, prior to the coming into force of the Assessment Rules, 1993, the annual letting value was to be determined separately for each individual holding, having regard to various relevant circumstances. The Government felt that such a system left scope for corruption and arbitrariness and desired to devise a system of taxation which would eliminate chances of corruption or arbitrariness. After publication of the Assessment Rules, 1993, the Corporation issued two notifications dated

8-9-1992, one under Rule 3(2) and the other under Rule 5(1) of the said Rules. Under the first notification issued under Rule 3(2), the Corporation classified the several roads in Patna City into three categories. Twenty-four roads were identified as "principal main roads", eighty-eight were identified as "main roads" while the rest of the roads, streets, lanes, by-lanes, *gullies*, alleys not falling under first two categories are placed in the third category. In the second notification issued under Rule 5(1), the Corporation specified the rates of rental value per square foot depending upon the situation, use and the nature of construction of the holdings.

44. The Patna High Court quashed the notifications. The Supreme Court allowed the appeals filed by the State of Bihar and the Patna Municipal Corporation. The Supreme Court accepted that the rental value of buildings falling in any of the three categories as specified by the Corporation would not be uniform. It was noticed that there would be any number of distinguishing features even among one class of buildings say, pucca buildings with RCC roof depending upon the quality of finish, the nature of fittings, the dimensions of rooms, the type of material used in construction etc. The list could be endless. It noted that it may not be possible to evolve a classification to cater to all the distinctions. In any classification, there will always be some instances where one gets an advantage and the other suffers a disadvantage but that is no ground, for invalidating a statute and more particularly a taxing statute. It was observed:

> ***"13.*** *Let us examine the facts of this case in the light of the aforestated principles. The main objection of the High Court to Rule 3(1) is that "the classifications made thereunder, either in case of roads or in case of types of constructions are wholly*

inadequate and incomplete and are therefore bound to lead to the result quite unrelated to the actual letting value of the holdings". The High Court suggested an enlargement of the classification; it opined: "Perhaps classifying buildings into A, B and C classes, depending upon the quality of finish etc. in addition to the type of construction of the structure would have gone a long way in meeting the challenge advanced by the petitioners." The other criticism against the rule is that the division of the Municipal Corporation area with reference to roads is bad and that it should have been done zone-wise, i.e., on the basis of zones.

Taking the first criticism, the High Court does not say that the classification made by the rule-making authority is bad. The rule has divided the buildings into three categories on the basis of the type of construction, viz., (i) pucca buildings with RCC roof, (ii) pucca buildings with asbestos/corrugated sheet roof and (iii) all other buildings not falling under (i) and (ii). That this is a reasonable classification for the purposes of fixing different rates of tax is not disputed. What is said by the High Court is that there should have been a further classification among these three categories depending upon the quality of finish, appurtenances, provisions, conveniences and facilities etc. The High Court is of the opinion that all buildings in any one of the said three categories do not fetch the same rent and that the rent of a building depends upon several factors mentioned by it and for that reason, the classification has been held to be inadequate and incomplete. The question is whether the absence of further classification on the basis suggested makes the classification made by the rule discriminatory and offensive to Article 14. We think not. This was precisely the argument which was dealt with and rejected in Twyford Tea Co. Ltd. The contention was that the Act impugned therein provided for "a uniform rate of tax per *hectare which every owner of a named plantation has to pay irrespective of the extent or value of the produce and therefore the law imposes a uniform tax burden on unequals". Repelling the argument, Hidayatullah, C.J. speaking for the majority, stressed that in such cases: (SCC p. 197, para 16)*

> *"The burden is proving not possible 'inequality' but hostile 'unequal' treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be hostilely or unequally treated. A uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi give different out-turns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality. The Legislature has obviously thought of equalising the tax through a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less 'hostile treatment'. All that is said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another."*

14. *It is one thing to suggest that the rule-making authority may consider making a further distinction on the lines suggested and an altogether different thing to strike down the rule itself on the ground of inadequate classification. It is true that the rental value of building falling in any of the three categories will not be uniform. There would be any number of distinguishing features even among, say, pucca buildings with RCC roof depending upon the quality of finish, the nature of fittings, the dimensions of rooms, the type of material used in construction and so on and so forth. It would be an endless quest. It would not be easy to draw the lines of distinction. It* *may not be possible to evolve a classification to cater to all these several distinctions. Even if it is so evolved, not only would it be too complex and elaborate, it would leave too much discretion to assessing authorities, the elimination of which is one of the main objects of the new Rules. The low rates of tax specified in Rule 6 of the Assessment Rules (2 1/2% of the annual rental value in the case of tax on holdings, 2% of annual rental value in the case of water tax as well as latrine tax) ensures that even a building with an inferior quality of furnish is not subjected to an undue burden of tax. Treating all pucca buildings with RCC roof as one class and subjecting them to uniform rate of tax — subject, of course, to the location and nature of user — cannot be said to amount to hostile discrimination so as to offend Article 14. A mere possibility of a better classification is no ground to strike down the classification made by the statutory authority — more particularly in the case of a taxing enactment. Saying so would be to deny the "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 rate or rates applicable". It would also run counter to the entire reasoning of this Court in R.K. Garg in the passages quoted above. Similarly, the other objection that the Municipal Corporation area ought to have been divided on the basis of zones and not on the basis of the roads is also not a ground upon which the Court could have invalidated the rule. It is not pointed out that the division with reference to roads amounts to hostile treatment. In case of such classification, there will always be some instances where one gets an advantage and the other suffers a disadvantage but that is no ground, as has been repeatedly emphasised by this Court in the decisions referred to above for invalidating a statute and more particularly a taxing statute. The merit of the Assessment Rules, 1993 as emphasised by the High Court at more than one* *place, is that they rid the houseowners of the harassment and the constant threats of revision of annual rental value by the officials concerned of the Corporation. The earlier system of taxation left too much discretion in their hands. Now, the only thing that has to be ascertained is the carpet area of the house, the rest is determined by the rules and the notifications. There is no question of revision of annual rental value periodically on the ground that the rental value has gone up. A new system, with all good intentions is being tried out — a system designed in the interest of the body of houseowners/tax-payers as well as the Corporation. May be, this is the trial and error method spoken of in R.K. Garg. Unless found to be offending the constitutional or statutory provisions, it must be allowed to be worked out. One should start with the presumption that the Corporation knows what is the better method of classification. It has chosen to divide it with reference to roads. It is difficult for the Court to substitute its opinion for that of the Corporation nor can anyone guarantee that if the Municipal Corporation area is divided on the basis of zones it will be a perfect classification and would eliminate all complaints and grievances of differential treatment. It is because of the inherent complex nature of taxation that a greater latitude and a larger elbow room is conceded to the legislature — or its delegate, as the case may be — in such matters............"*

45. Tested on the anvil of the principles aforesaid we do not find any justification to quash the impugned notification. As per the notification the tax is applicable to buildings/ institutions primarily of a commercial character. The rate of tax is not uniform irrespective of location of the institution or building. Depending on the location of the building or institution it varies from ₹ 0.80 per square foot to ₹ 1.00 per square foot. There are eight different zones with rates of tax specified against each. Each

zone after listing the municipality/ municipalities also specifies the distance outside the Municipal limits upto which the tax indicated therein would be applicable. The distance appears to have been fixed taking note of the expansion/urbanization/ development beyond the municipal limits. It is longest (15 kms.) in the case of Ludhiana where the city has expanded much beyond the municipal limits. It is 3 kms in case of smaller municipalities mentioned as Serial No.5 of the notification. Similarly, the rate of tax is highest in case of the more important municipalities and lesser in case of the smaller municipalities. Sr. No.9 covers all the areas outside the municipal limits which do not find mention from Sr. Nos.1 to 8 where the rate is of ₹ 0.80 per square foot, which is the lowest. Thus, there is classification, which may not be perfect, which perhaps no classification can ever be.

46. The observations in the above cases that merely because the classification is not perfect or that there is scope for improvement by making further classification is itself no ground to hold the tax to be discriminatory also answers the argument of the Ld. Counsel for the petitioners that the State by issuing a new notification in 2015, making a further classification of the institutions and buildings for the purposes of the tax has itself accepted that the impugned notification is illegal. There is no merit in this submission on behalf of the Ld. Counsel for the petitioners as well.

Burden of proof to prove discrimination not discharged :

47. It is settled law that the burden of proving discrimination is always heavy and more so in taxation law. The burden in taxation is not merely proving possible "inequality" but hostile "unequal" treatment. This

is to be done by facts and figures as to how the imposition which is alleged to be discriminatory is actually so.

48. The above propositions have been settled in a long line of cases some of which are being referred to.

49. In **Ajoy Kumar Mukherjee v. Local Board of Barpeta,** (1965) 3 SCR 47 : AIR 1965 SC 1561 regarding this aspect it was observed as under:

> *"**7.** Then we come to the contention under Article 14 of the Constitution. As to that it is well-settled that it is for the person who alleges that equality before law has been infringed to show that such really is the case. It was therefore for the appellant to produce facts and figures from which it can be inferred that the tax imposed in the present case is hit by Article 14 of the Constitution. In that connection, all that the appellant has stated in his writ petition is that the board fixed a high rate arbitrarily and thus discriminated against the appellant's market as against the other neighbouring markets where the tax had been fixed at a much lower rate, and that this was hit by Article 14. There was certainly an allegation by the appellant that Article 14 had been infringed; but that allegation is vague and gives no facts and figures for holding that the tax imposed on the Kharma market was discriminatory. It appears that the tax was imposed for the year 1953-54, which was continued later on, with some modifications. At that time there were five markets on which the tax was imposed including the Kharma market. The lowest tax was at Rs 400 on two markets, then at Rs 500 on the third market and at Rs 600 on the Kharma market and finally at Rs 1000 on the fifth market.*
>
> *Rule 300(2), flamed in accordance with Section 63(3) runs thus:*

> *"Rs 1000 (Rupees one thousand) only per annum has been fixed as the maximum amount of tax which may be levied by the local boards in Assam on markets licensed under Section 62 of the Act.*
>
> *Any local board may with the previous approval of Government impose a tax within this maximum according to the size and importance of a market."*

Now, the rule provides that Rs 1000 is the maximum tax and within that maximum the board has to graduate the tax according to the size and importance of the market. The size of the market naturally takes into account the area of the land on which the market is held; the importance of the market depends upon the number of transactions that take place there, for the larger the number of transactions the greater is the importance of the market. ***If therefore the appellant is to succeed on his plea of Article 14 on the ground that the tax fixed on his market was discriminatory he had to adduce facts and figures, firstly as to the size of the five markets on which the tax was levied in the relevant years and secondly as to the relative importance of these markets. But no such facts and figures have been adduced on behalf of the appellant. It is true that the respondent in reply to the charge of discrimination was equally vague and merely denied that there was any arbitrary discrimination. But it was for the appellant to show that in fixing the tax on the five markets as it did, the board acted arbitrarily and did not take into account the size and importance of the markets. As there is no material before us by which we can judge the relative size and importance of the five markets, it is not possible to hold that there was discrimination in taxing Kharma market at Rs 600 per year as compared to taxing the three other markets at less than Rs 600. The attack therefore on the amount actually fixed on the ground of discrimination must fail.*** *(Emphasis supplied)*

8. Unfortunately, there was no clear perception by the parties of what has to be pleaded and proved to establish a plea of denial of equal protection of the law. The company merely assumed that the existence of a law relating to taxation which imposed agricultural income tax in the Bhopal region, there being no similar levy in the rest of the State, was in law discriminatory. That is clear from the petition of the Company which merely asserted that the Act discriminated between the Company and other owners of sugarcane farms in the State of Madhya Pradesh, because it singled out the Company and other agriculturists in the Bhopal region from other agriculturists and sugarcane farm owners in the State of Madhya Pradesh and subjected them to liability without any reasonable basis for classification. The Company therefore boldly submitted that after the incorporation of the Bhopal region in the reorganised State, the State of Madhya Pradesh ought to have suitably modified the Act so as to make it applicable to all residents alike and by allowing the Act to operate without any modification, the State had violated the fundamental right of the Company under Article 14 of the Constitution. The State of Madhya Pradesh did not file any affidavit in reply before the High Court, and chose to defend the petition as if its decision depended on a pure question of law, that if for historical reasons the Act in operation in a region incorporated in the new State was not discriminatory at the date when the reorganisation took place, it can never become discriminatory thereafter. The assumptions made by both the parties appear to be erroneous. The High Court was of the view that after expiry of a reasonable period during which the State has the opportunity of making necessary adaptations so as to make the Act applicable to the entirety of the new State, if the State fails to adapt the law, historical considerations which initially justified the classification must be deemed to *have disappeared. The assumption without further enquiry may not be accepted as correct. It was necessary for the High Court to investigate whether at the date when the petition was filed, special treatment of the Bhopal region in the matter of law of agricultural income tax had a rational basis. That necessitated an enquiry into the structure of tax burden imposed directly or indirectly on or in respect of agricultural land or income from it in the different regions constituting the State. If for instance, on account of disparity in the impost of land revenue and related taxes on land and income from land in other regions, the ultimate burden on persons in the Bhopal region who were subjected to agricultural income tax and agricultural land owners in the rest of the State did not disclose a pattern of wide variations, the mere existence of agricultural income impost in one region, and absence of such impost in another region may not necessarily justify an inference of unlawful discrimination. It was therefore necessary to ascertain the difference in the overall tax liability between persons similarly situated in the State of Madhya Pradesh in the matter of levy of agricultural tax. For that purpose an investigation was necessary whether the incidence of total burden on agriculturists was so disparate that an inference of unlawful discrimination may reasonably be made. The High Court had to ascertain the impact of diverse land taxes imposed on agricultural land in the four regions of the State, and whether the burden between persons similarly circumstanced was substantially dissimilar, and whether continuance of dissimilar levies was justified. If upon a thorough examination of the pattern of land taxes in different regions of the State, it appeared to the Court that an unreasonably larger burden was sought to be continued upon this region, without any apparently justifiable ground, an inference of discrimination may arise.*

xxx xxx xxx

> ***11. The petition filed by the Company was singularly deficient in furnishing particulars which would justify the plea of infringement of Article 14 of the Constitution. It cannot be true strongly emphasized that to make out a case of denial of the equal protection of the laws under Article 14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that equal protection of the laws has been denied to him must make out that not only he had been treated differently from others but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made. A mere plea that the Company and other agriculturists within the region of the former Bhopal State had to pay the agricultural income tax, whereas the agriculturists elsewhere had not to pay such tax, is not sufficient to make out a case of infringement of the fundamental right under Article 14 of the Constitution.***"*(emphasis supplied)*

In **Twyford Tea Co. Ltd. v. State of Kerala,** (1970) 1 SCC 189, it was observed thus:

> ***"16***. *The next principle is that the burden of proving discrimination is always heavy and heavier still when a taxing statute is under attack. This was also observed in the same case of this Court at p. 411 approving the dictum of the Supreme Court of the United States in Madden v. Kentucky:*
>
> > *"In taxation even more than in other fields, Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."*
>
> *As Rottschaefer said in his Constitutional Law at p. 668:*

> *"A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decisions of the Supreme Court in this field have permitted a State Legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes."*

The burden is on a person complaining of discrimination. The burden is proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be 'hostilely or unequally' treated. An uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi give different out-turns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality. The Legislature has obviously thought of equalising the tax through a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less "hostile treatment". All that is said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another."

In **R. Senthil Babu v. State of T.N.,** (2009) 2 SCC 309, challenge was to the constitutional validity of the Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1998, by which initially the rate of tax in respect of contract carriage stood increased from ₹ 1500/- per seat per quarter to ₹ 2000/- per seat per quarter, and subsequently the said rate stood enhanced from ₹ 2000/- per seat per quarter to ₹ 3000/- per seat per quarter with effect from 1-12-2001. On the aspect of the burden of proof in regard to the discrimination and the manner of its discharge it was observed as under:

> "***3.*** *The basis of the challenge rests on the uneven burden placed on the owners of contract carriage vis-à-vis stage carriage. Broadly, it is contended that there is no rationale in the imposition of the levy, that tax is imposed indiscriminately, that it is levied to cross-subsidise stage carriage and that uneven burden has been placed on the owners of contract carriage which has no nexus with the services or amenities provided.* ***Generally, in a matter of this nature, the quantifiable data forms the basis of the challenge. At the initial stage when the petition is filed in such cases there has got to be a precise formulation of the ground of challenge from the side of the appellants based on some statistical data as to disproportionality of the rate of tax. It is only thereafter that the burden will shift on to the State to submit quantifiable and measurable data.***
>
> ***4.*** *In the present case we find that the initial burden on the appellants itself has not been discharged in the sense that the petitions filed before the High Court were very sketchy. A challenge of this nature requires the appellants to furnish greater details before the State could be called upon to submit quantifiable and measurable data justifying the impugned rate. Ultimately, it is the State which has to meet the allegations made in the writ petitions and if those allegations made in the writ petitions are vague, inaccurate or insufficient then it would not be possible for the State to submit its reply/data to the Court.*
>
> xxx xxx xxx
>
> ***7.*** *Realising this difficulty, learned counsel appearing on behalf of the appellants fairly stated that he would seek permission of this Court to withdraw the civil appeals/special*

> *leave petitions with liberty to file a proper writ petition in the High Court giving requisite details and available data. Normally, we would not have granted such permission. However, as stated above, questions of public importance arise in these matters, particularly in the context of the principles of proportionality under Article 14 of the Constitution and the later development of law as indicated by this Court in Jindal Stainless Ltd. (2).”*

50. In the present set of cases also, beyond a bald assertion that the imposition by the notification is discriminatory, there is nothing on record to substantiate the plea. No facts and figures have been given regarding the burden of tax and how it compares un-favourably with others as to amount to hostile discrimination. In the absence of such data, it is not possible to hold in favour of the petitioners and the petitions are liable to be dismissed on this ground alone.

51. It is further to be noted that the tax imposed varies from ₹ 0.80 per square foot per annum to ₹ 1.00 per square foot per annum. This by no stretch is an exorbitant rate. Nor has it been pointed out with reference to any particular case that it causes great hardship, though that too itself may not be a ground to impugn its validity. Moreover, this notification remained operative only from 28th February, 2013 to 20th February, 2015. It was modified by the notification dated 20th February, 2015 as per which the tax was levied per square feet per annum to be calculated on the basis of multiple factors Location of the Building; Nature of usage (Commercial, Institutional including Hotel, Marriage Palaces, Hospitals, Industrial and other purposes); Land Value Factor (Collector Rate per acre); Type of

building and cost of construction of building factors, Rental Value Factor etc.

52. Thus, we find no merit in these petitions and the same are dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 11, 2017
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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No