Before *Surya Kant & R.P.Nagrath,JJ.*

KRBL LIMITED—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 12965 of 2012

January 25, 2013

Constitution of India, 1950 - Art.13, 14, 226, 227 & 265 read with entry No. 49 contained in Schedule VII of its list-II - Punjab (Institutional and other Buildings) Tax Act, 2011 - S. 3 - Punjab General Clauses Act, 1897- S.22 - Petitioners assailed Constitutional validity of Section 3 being ultra vires - Petitioners sought quashing of Notification dated 02.02.2011 and striking down Public Notice dated 10.06.2011 - Held that Section 3 and/or other provisions of the Punjab (Institutional and other Buildings) Tax Act 2011 upheld as they are intra vires and do not violate any provisions of Constitution of India - Since solitary object of 2011 Act is to levy tax on building located outside Municipal Area in State of Punjab - It is futility exercise to question legislative competence - As long as the delegate namely State exercise power in consonance with legislative policy and determine tax on building intelligible differentia stubbed with principle of reasonable classification.

SURYA KANT,J

Held, thatArticle 246 of the Constitution makes a distinction between and segregates the powers to make Laws by Parliament, viz-a-viz State Legislatures, and its sub-article (3) expressly provides that subject to clauses (1) & (2), the Legislature of any State has exclusive power to make Laws for such State or any part thereof in respect of any of the matters enumerated in List II in the Seventh Schedule, referred to as 'the State List'. Entry No.49 of List II (State list) authorizes the Legislature of a State to enact Laws regarding 'tax on lands and buildings'. It is not the case of the petitioners that there is any other entry in List I (Union List) or in List III (Concurrent List) enabling the Parliament to legislate with regard to taxing the lands or buildings, nor have they referred to any Central Act to suggest any inconsistency between the two sets of Laws within the meaning of Article 251 of the Constitution. Since the solitary object of the 2011 Act is to levy tax on the 'buildings' located outside the municipal areas in the State of Punjab, it would be an exercise in futility to question the legislative competence of the State Legislature to enact such Law. The challenge on the ground of legislative incompetence, therefore, must fail.

(Para 34)

Further held, that 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.

(Para 40)

Further held, that we, therefore, hold that so long as the delegate, namely, the State Government exercises its power under Section 3 (1) in consonance with the legislative policy of 2011 Act and determines the rate of tax leviable on different 'buildings' or 'institutions' on the basis of an intelligible criteria studded with the principle of reasonable classification and which brings no inequality due to lack of classification, Section 3 of 2011 Act cannot be held to be offensive to Article 14 of the Constitution. The second ground of attack, therefore, too has no strength to sustain. Section 3 of the 2011 Act is accordingly held to be constitutionally valid.

(Para 42)

Further held, that 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.

(Para 44)

Further held, that consequently, we hold that the notification dated 2.2.2011 cannot sustain in law and is hereby quashed. As a necessary corollary thereto, the public notice dated 10.6.2011 calling upon the owners/occupiers of the buildings/institutions to deposit the building tax pursuant to the aforesaid notification or the individual notices served upon the petitioners, are also liable to be met with the same fact. They are accordingly quashed.

(Para 45)

K.L.Goyal, Senior Advocate with Rishab Singla and Mr.Joginder Singh, Advocates, *for the petitioner(s)*
Rajiv Atma Ram, Senior Advocate with Arjun Partap Atma Ram, Advocate, *for the petitioners(s)* in CWP No.15294 of 2012.
Ms.Munisha Gandhi, Additional AG, Punjab.

SURYA KANT, J.

(1) This order shall dispose of Civil Writ Petitions No.12965, 12977, 12983, 16656, 20522 and 15294 of 2012. The petitioners in these cases assail Constitutional validity of Section 3 of Punjab (Institutional and Other Buildings) Tax Act, 2011 as according to them, it is ultra-vires Articles 13, 14 and 265 of the Constitution of India read with Entry No.49 contained in Schedule VII of its List-II in so far as the charging of tax on 'institutions' and 'buildings' on the basis of a fixed floorage area irrespective of other considerations like construction, location or the purpose for which it is used etc. is concerned. The petitioners also seek quashing ofthe Notification dated 2.2.2011 published on 3.2.2011, issued in purported exercise of the powers exercisable under the afore-said Act, which is allegedly discriminatory and violative of Article 14 of the Constitution. In addition, the petitioners seek to strike down the public notice dated 10.6.2011 followed by individual notices like the one dated 12.7.2011 directing them to inform the 'covered area' of their respective establishments.

(2) For convenience, the facts are being extracted from Civil Writ Petition No.12965 of 2012.

(3) The petitioner-Company runs an industrial unit for extraction of Basmati rice which is sold within and outside the country under the brand name of 'India Gate'. The petitioner's rice shelling plant is located at village Bhasur near Dhuri, District Sangrur and is outside the municipal limits. The plant has a built-up area of 9,00,000 square feet . Since the petitioner has been served with a notice dated 12.7.2011 (Annexure P-9) calling upon it to intimate about the 'covered area' of its establishment which is more than 500 square ft. and since the aforesaid information has been sought for imposition of 'institutional tax', that the petitioner questions the constitutionality of Section 3 of Punjab (Institutional and Other Buildings) Tax Act, 2011 (for short the '2011 Act') as well as the notification dated 2/3.2.2011

(Annexure P-7) issued in purported exercise of powers vested under Section 3 of 2C11 Act coupled with the public notice dated 10.6.2011 (Annexure P-8) informing the owners/occupiers of the taxable buildings regarding levy and collection of institutional tax and the mandatory steps required to be taken by such owners/occupiers for registration of premises, measurement of area, calculation of tax and its consequential deposits in the treasury on or before 31.8.2011.

(4) The respondents have filed their reply-affidavits, interalia, maintaining that the competent legislature has enacted the Act to impose property tax "on all the buildings and institutions on the basis of covered area of the property, irrespective of its location, construction, utility, profitability and usage" and the tax is levieduniformly taking into consideration the elements existing with the 'building' and 'institution' as defined under Act No.9 of 2011. The respondents have also defended the notifications dated 2/3.2.2011 fixing the rate of tax at Re.1/- per square ft. of the 'covered area' of the institution or building, which also authorizes the officers of Excise and Taxation Department to act as the Assessing or the Appellate Authorities under this Act. Section 22 of the Punjab General Clauses Act, 1897 and some decisions of the Hon'ble Supreme Court have been relied upon to contend that the notifications issued under the Ordinance of 2010 are valid under the 2011 Act also as there is no inconsistency between the provisions contained in the Ordinance or the Act. It is denied that the tax levied on the basis of 'floorage' is discriminatory. It is also claimed that the property tax of Re.1/- per square ft. of the covered area is at a very nominal rate and since it has been applied uniformly, it does not violate Article 14 of the Constitution.

BRIEF HISTORY AND RELEVANT PROVISIONS OF 2011 STATE ACT.

(5) The State of Punjab notified Punjab Ordinance No.1 of 2011 in its official Gazette on 10.1.2011 to give effect to 'Punjab (Institutions and Other Buildings) Tax Ordinance 2010 which was promulgated with the object "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 the matters connected therewith or incidental thereto".

(6) The Ordinance was then introduced as a Bill which was passed by the State Legislative Assembly and on receiving assent of the Governor of Punjab on 2.4.2011, it was published in the Punjab Government Gazette on 6.4.2011. Section 2 of the 2011 Act defines various words and phrases including 'building', 'institution', 'municipal area', 'occupier', 'owner' etc., out of which the expressions relevant to resolve the controversy in hand, 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 part, 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;
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> xx xx xx xx
>
> (f) 'institution' means an institution, other than the school upto Senior Secondary Level, which is imparting education of any kind, and includes nursinghomes, 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……."

(7) The Charging Section of the 2011 Act, namely, Section 3 is the central pole of debate and it reads 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 thecovered 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...."

(8) Section 4 (1) contemplates self-assessment of the taxby every owner or occupier who is to file a return and pay the full amount of tax as assessed by him under the Act to the Assessing Authority. Section 5 authorizes the Assessing Authority to ascertain the correctness of the returns and for this purpose, to check the returns, documents or information submitted by the owner or the occupier, as the case may be, and if it is found that an additional tax is still due, Section 6 (1) authorizes the Assessing Authority to raise a demand through notice. Sub-section (2) of Section 6 empowers the Assessing Authority to make an assessment to the best of its judgment on the basis of information received by him. Section 8 of the Act enables imposition of penalty for failure to pay the tax when due, while Section 9 authorizes the Assessing Authority to take coercive steps including sealing the building or the institution, as the case may be, for recovery of the due amount of tax and penalty. Any amount of tax payable under the Act is also recoverable as arrears of land revenue as provided under Section 13 and in case there is a change of title of the ownership or the occupier, an intimation to this effect is required to be submitted within a period of three months by a notice in writing to the Assessing Authority alongwith requisite documents.

(9) There is also a provision contained in Section 15 saying that when any new institution or building is constructed, reconstructed, enlarged or re-occupied after its vacation, the person liable for payment of tax is required to give notice thereof in writing to the Assessing Authority. Section 17 (1) authorizes the Assessing Authority to seek written information regarding name and place of residence of the owner/occupier of an institution or building, measurement or dimensions of such institution or building etc. Section 18 of the Act provides an appeal against the order of the Assessing Authority which cannot be entertained unless the appellant has paid the whole amount of tax due. Section 19 vests the power of condonation of delay in the Appellate Authority. Section 20 contains powers of the Revisional

Authority which are vested in the State Government and in exercise whereof, it may confirm, alter or rescind the order of the Appellate Authority. Section 22 declares that payment of any tax under this Act shall not amount to legalize the construction or re-construction of any institution or building, if it otherwise violates provisions of the Punjab New Capital (Periphery) Control Act, 1952, the Punjab Regional and Town Planning and Development Act, 1995 etc.

(10) Reverting back to Section 3 of the 2011 Act, it may be seen that (i) it levies a tax on the institutions and buildings; (ii) at a rate not exceeding Rs.10/- per square feet of the covered area of such institution or building; (iii) the State Government by notification in the Official Gazette shall specify from time to time the actual rate of tax levied but it cannot exceed the maximum limit of Rs10/- per square feet specified by the Legislature.

GROUNDS OF CHALLEGE TO SECTION 3 OF THE ACT.

(11) The preeminent contention of the petitioner is that Section 3 of the 2011 Act is hit by Article 14 of the Constitution of India as it makes no attempt to extend equal treatment to the persons alike nor does it set out any reasonable classification. According to the petitioners, Section 3 is a glaring example of the one treating unequals as equals as all the buildings having a floor area of 500 square feet have been clubbed together and subjected to the levy of the same amount of tax.

(12) The petitioners further urged that all the buildings or institutions are not agnate as they were constructed at different times. The quality of constructions of such buildings are largely different and so would be the building material used for their construction. Similarly, most of the factories are built with semipermanent structures such as tin-shed roofs while the buildings of hospitals, colleges or marriage resorts are constructed with superior material. These buildings with totally distinct quality of construction or utilities cannot be clubbed together arbitrarily and indiscriminately.

(13) The third facet of the challenge to the charging section is that it runs parallel to Article 14 of the Constitution as the taxable buildings and institutions are located in different areas of the State of Punjab and the degree of development differs not only from district to district but from

locality to locality also. It is explained that a building close to a town would have higher annual rental value viz-a-viz the other located in a remote rural area. It was illustratively argued that the potentiality, commercial value and income generation capacity of a building located in the border area of Gurdaspur district can never be at par with that of a building located outside the municipal limits of Ludhiana city but the impugned provision has equalized both the buildings in utter disregard to the guarantee of 'equality before law'.

(14) To support their contention that Article 14 of the Constitution stands violated, the petitioners have also relied upon the Collector's rates fixed for immovable properties, as according to them such a differentiation is essentially due to the varying value of immovable properties and therefore, all these buildings do not constitute one homogeneous class for levying tax at a flat floorage rate.

(15) The petitioners vehemently urged that Entry No.49 of List II of the VII Schedule of the Constitution does not authorize the State Legislature to levy tax on the basis of floorage area irrespective of the use, situation, construction, development and location of such building or institution.

(16) The petitioners also maintained that since the impugned provision does not stand the test of Article 14 or the source of Legislative power under the Constitution, Section 3 of the 2011 Act does not qualify the litmus test of Article 265 nor can it can be conferred the authority of 'law' within the meaning of Article 13 of the Constitution, and it being derogatory to the fundamental rights is liable to be struck down.

(17) The petitioners supported their contentions by referring to the following statement of law laid down by the Hon'ble Supreme Court in ***Kunnathat Thathunni Moopil Nair etc.*** versus ***State of Kerala and another, (1)***:-

> ".....Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative

(1) AIR 1961 SC 552

competence of the Legislature imposing a tax and authorizing the collection thereof and, secondly, the tax must be subject to the conditions laid down in Article 13 of the Constitution. One of such conditions envisaged by Article 13 (2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Article 14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Article 14 of the Constitution, it must be struck down as unconstitutional......"

(18) The offending provision, namely, Section 3 of the 2011 Act is said to have contravened the following passage of the cited decision also:-

"....(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" (S.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 thesecond 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 realization 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."

(19) The petitioners heavily banked upon a decision of the Kerala High Court in ***Nellyil Kunhali Haji*** versus ***State of Kerala and another (2),*** which was upheld by the Hon'ble Supreme Court in ***State of Kerala*** versus ***Haji K. Haji K.Kutty Naha and another (3),*** wherein Section 4 of the Kerala Buildings Tax Act, 1961 was struck down for levying tax on the basis of 'floor area' of the building instead of valuation of the letting value of the property as it lacked 'classification' resulting in inequality and since the offending provision was not severable from valid provisions, the entire Act was held invalid.

(20) Section 4 of the Kerala Act alongwith the definition of 'building' and 'floorage' given in that Act are referred to in extenso by the Hon'ble Supreme Court in para-2 of its judgment which reads as follows:-

"....2. The material provisions of the Kerala Building Act, 1961, may be briefly set out. The Act extends to the whole of the State of Kerala: Sec.1 (2), and shall be deemed to have come into force with effect from March 2, 1961: Section 1 (3). An 'assessee' is defined by Section 2 (b) as meaning a person by whom building tax or any other sum of money is payable under the Act and includes every person in respect of whom any proceeding under the Act has been

(1) AIR 1966 Kerla 14
(2) AIR 1969 SC 378
(3) AIR 1969 SC 378

taken for the assessment of building tax payable by him. Section 2 (d) defines 'building' as meaning a house, out-house, garage or any other structure or part thereof whether of masonry, bricks, wood, metal, or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure. 'Floorage' is defined by Section 2 (c) as meaning the area included in the floor of a building, and where a building has more than one floor of a building, the aggregate area included in all the floors together. 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 are exempted from payment of tax under the Act. By Section 4, it is provided that there shall be a charge to tax in respect of every building the construction of which is completed on or after March 2, 1961, and which has a floor area of one thousand square feet or more, and that the building tax shall be payable by the owner of the building. The Schedule to the Act sets out the rates of building tax. Buildings having a total floor area of less than 1000 square feet are not liable to pay tax….."

(21) The above-mentioned provisions of the Kerala Act were disapproved by the Apex Court holding as follows:-

"….3. The Act, on a bare perusal, discloses some singular provisions. The liability to tax in respect of buildings having total floor area between 1000 and 2000 sq. ft. varies between Rs.100/- to Rs.200/-; for buildings with a floor area between 2000 to 4000 sq. ft., it varies between Rs.400/- to Rs.800/-; for buildings having total floor area between 4000 to 8000 sq. ft., it varies between Rs.1200/- to Rs.2400/-; for buildings with total floor area of 8000 to 12000 sq. ft., it varies between Rs.3200/- to Rs.4800/-; in respect of the buildings having total floor area exceeding 12000 sq. ft., a rate of 50 np per square ft., i.e., Rs.6000/- or more per annum. For determining the quantum of tax the sole test is the area of the floor of the building. The Act applies to the entire State of Kerala, and whether the building is situate in a large industrial town or in an insignificant village, the rate of tax is determined by the floor area; it does not depend upon

the purpose for which the building is used, the nature of the structure, the town and locality in which the building is situate, the economic rent which may be obtained form 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. Under the Seventh Schedule List II Entry 49, the State Legislature has the power to legislate the levying taxes on lands and buildings. But that power cannot be used arbitrarily and in a manner inconsistent with the fundamental rights guaranteed to the people under the Constitution. No tax may be levied or collected under our constitutional set-up except by authority of law and the law must not only be within the legislative competence of the State, but it must also not be inconsistent with any provision of the Constitution......"

(emphasis applied)

(22) In ***Lokmanya Mills Barsi Ltd.*** versus ***Barsi Borough Municipality, Barsi (4),*** the Barsi Borough Municipality, Barsi was entitled to levy water tax as well as a tax on land and buildings. Under the rules framed by the municipality, the house tax and water tax were levied on buildings and nonagricultural lands on their annual letting value at uniform rates whether the purpose was residential, business or manufacturing. The said rule was struck down by the Hon'ble Supreme Court laying down that "the vice of the rule lies in an assumed uniformity of return per square foot with structures of different classes which are in their nature not similar, may reasonably fetch if let out to tenants and in the virtual deprivation to the rate-payer of his statutory right to object to the valuation....".

(23) In ***New Manek Chowk Spg. and Wvg. Mills Co. Limited etc.*** versus ***Municipal Corporation of the City of Ahmedabad and others (5),*** levying of property tax on textile mills, factories, buildings of universities etc. on flat rate method according to floor area adopted for determining rent for fixing rate-able value, was held violative of Article 14 of the Constitution of India.

(24) In ***Rajab Mahal Co-operative Housing Society Limited*** versus ***State of Maharashtra and others (6),*** there was a challenge to

(4) AIR 1961 SC 1358
(5) AIR 1967 SC 1801
(6) AIR 1980 Bombay 358

the definition of 'floorage' of 'building' aswell as charging provision (Section 3) of Maharashtra Tax on Residential Premises Act, 1974. The charging section of that Act laid down that "subject to the provisions of this Act, there shall be levied and collected for every year commencing on the 1st April, 1974, a tax on all residential premises on the basis of its floorage situated in corporation areas specified in Column 1 of the Schedule at the rates, set out against each such area in Column 2 of the Schedule". Relying upon the Hon'ble Supreme Court's decision in Kerala case of Haji K. Haji K.Kutty Naha and another (supra), the Bombay High Court struck down the above stated provision as it offended Article 14 of the Constitution.

(25) In ***P.Bhuvaneswariah and others*** versus ***State of Mysore and others (7),*** Section 4 of the Mysore Building Tax Act, 1963 was held violative of Articles 14 & 19 of the Constitution as the classification based on 'floorage of building' was held irrational, having no just relationship with the object of the Act.

(26) The cited decisions on being read together, make it explicit that the provision in a Statute whereby tax is levied on property taking the basis of 'floorage area' would be totally irrational, without any nexus with the object sought to be achieved and such a provision does violence to Article 14 of the Constitution.

(27) Since the validity of Section 3 of 2011 Act is under challenge essentially on the ground that it is discriminatory and inconsistent with Entry No.49 of List II in Schedule VII of the Constitution, it is vital to interpret firstly the relevant provisions and then consider the substance, if any, in the challenge laid before us.

(28) The 2011 Act has been undoubtedly legislated to provide for the levying and collection of tax on certain 'institutions' and 'buildings' situated outside the municipal areas in the State of Punjab. Its Section 2 (c) defines 'building' which must satisfy the following ingredients:-

(i) it should be a structure partly or fully constructed whether of masonry, bricks, wood, mud, metal or other material;

(ii) the covered area of such structure must be more than 500 square feet;

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(7) AIR 1965 Mysore 170

(iii) the structure is 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;

(iv) if the structure-cum-building is being used or intended to be used as a garage, godown, shopping mall, multiplex, marriage palace and showroom, it falls within Section 2 (c) of the Act;

(v) such building or structure should be situated outside the municipal area;

(vi) any building which is being used exclusively for a 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 is excluded.

(29) Section 2 (f) defines 'institution' to mean other than the school upto senior secondary level which is imparting education of any kind, and includes nursing homes, hospitals, universities and colleges of all kinds situated outside the municipal area.

(30) The phrase 'municipal area' as defined in Section 2 (g) includes 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.

(31) A conjoined reading of the relevant provisions can undoubtedly be construed to state that the 'buildings' or 'institutions' which are predominantly meant for commercial, business, vocational and/or professional purposes except the building of a school up to senior secondary level, and are located outside the municipal area(s), have been brought within the purview of the Statute and are the incidence of tax.

(32) The manner of taxation of these 'buildings' or 'institutions' is discernible from the charging section, namely. Section 3 and if dissected, it bears out that ;

(i) the rate of tax shall be specified by the State Government by way of notification in the Official Gazette;

(ii) the tax to be levied shall not exceed Rs.10/- per square feet of the covered area of the 'institution' or 'building';

(iii) the tax so levied is to be paid by the owner or the occupier of the building or institution, as the case may be.

(33) Before adverting to the primitive issue of validity ofSection 3, we may firstly consider the second limb of attack, namely, whether the 2011 Act lacks legislative competence?

(34) Article 246 of the Constitution makes a distinction between and segregates the powers to make Laws by Parliament, viz-a-viz State Legislatures, and its sub-article (3) expressly provides that subject to clauses (1) & (2), the Legislature of any State has exclusive power to make Laws for such State or any part thereof in respect of any of the matters enumerated in List II in the Seventh Schedule, referred to as 'the State List'. Entry No.49 of List II (State list) authorizes the Legislature of a State to enact Laws regarding 'tax on lands and buildings'. It is not the case of the petitioners that there is any other entry in List I (Union List) or in List III (Concurrent List) enabling the Parliament to legislate with regard to taxing the lands or buildings, nor have they referred to any Central Act to suggest any inconsistency between the two sets of Laws within the meaning of Article 251 of the Constitution. Since the solitary object of the 2011 Act is to levy tax on the 'buildings' located outside the municipal areas in the State of Punjab, it would be an exercise in futility to question the legislative competence of the State Legislature to enact such Law. The challenge on the ground of legislative incompetence, therefore, must fail.

(35) Coming to the arch challenge resting upon the alleged breach of Article 14 with the decisions in Haji K. Haji K.Kutty Naha and other cited cases, firstly it becomes imperative to briefly notice the provisions of the Kerala Act and compare them with the Punjab Act. The object of the Kerala Act was also like that of the Punjab Act, to levy tax on the 'buildings'. Its Section 2 (d) defined 'building' which more or less included a 'pucca structure' but its Section 3 (1) exempted those buildings which were used principally for religious, charitable and educational purposes or as factories or workshops. Its Section 2 (f) defined 'floorage' to mean the "area included in the floor of a building and where a building has more than one floor, the aggregate area included in all the floors together".

(36) Section 4 of the Kerala Act as its charging section was to the following effect:-

> "4. Charge of buildings tax: (1) Subject to the other provisions contained in this Act, there shall be charged a tax (hereinafter referred to as 'buildings tax') at the rate specified in the Schedule, in respect of every building the construction of which is completed on or before the 2nd day of March, 1961 and which has a floorage of one thousand square feet or more.
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> (2) The building tax shall be payable by the owner of the building.
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> Explanation 1. xx xx xx
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> Explanation 2. xx xx xx
>
> Explanation 3 xx xx xx"

(37) It may be seen that every building constructed on or before 2.3.1961 and which had a 'floorage area' of 1000 square feet or more, was levied with building tax under the Kerala Act "at the rate specified in the Schedule". The Schedule of the Act was an integral part of the Legislation and it prescribed building tax @ Rs.100/- to Rs.200/- for the building having total floor area between 1000 to 2000 square feet and @ Rs.400/- to Rs.800/- if the floor area increased to 2000 to 4000 square feet and so on. The sole criteria for determining the quantum of tax was, thus, the 'floor area' of the building irrespective of the fact whether the building was situated in a large industrial town or in an insignificant village. The rate of tax was determined by the floor area and did not depend upon the purpose for which the building was used, the nature of its structure, the town and locality in which the building was situated, the economic rent which may be obtained from the building and the cost of the building or other related factors. The lack of classification was found to have created inequality and so was the distribution of the burden of inequitable tax. The above reproduced provision was consequently struck down as it violated Articles 14 and 19 of the Constitution.

(38) As compared to the Kerala Act, the Charging Section (Section 3) of the Punjab Act has three significant distinguishable features:-

> (i) the tax leviable on an 'institution 'or 'building' is not pre-determined by the Legislature like it was under the Kerala Act;

(ii) the tax to be levied on an 'institution' or 'building' has a maximum cap of Rs.10/- per square feet of the covered area;

(iii) the rate of tax to be so levied upto the maximum limit is flexible and its determination has been delegated to the State Government who shall notify the same from time to time.

(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.

(42) We, therefore, hold that so long as the delegate, namely, the State Government exercises its power under Section 3 (1) in consonance with the legislative policy of 2011 Act and determines the rate of tax leviable on different 'buildings' or 'institutions' on the basis of an intelligible criteria studded with the principle of reasonable classification and which brings no inequality due to lack of classification, Section 3 of 2011 Act cannot be held to be offensive to Article 14 of the Constitution. The second ground of attack, therefore, too has no strength to sustain. Section 3 of the 2011 Act is accordingly held to be constitutionally valid.

(43) Having held that, we now proceed to consider the validity of the notification dated 2.2.2011 whereby in exercise of its delegated powers under Section 3 (1), the State Government has specified "rate of tax at Re.1/ - per square feet of the covered area of the institution or building, as the case may be".

(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.

(44) Consequently, we hold that the notification dated 2.2.2011 cannot sustain in law and is hereby quashed. As a necessary corollary thereto, the public notice dated 10.6.2011 calling upon the owners/occupiers of the buildings/institutions to deposit the building tax pursuant to the aforesaid notification or the individual notices served upon the petitioners, are also liable to be met with the same fact. They are accordingly quashed.

(45) For the reasons afore-stated, while Section 3 and/orother provisions of the Punjab (Institutions and Other Buildings) Tax Act, 2011 are upheld as they are intra-vires and do not violate any provision of the Constitution of India, the notification dated 2.2.2011 and the consequential notices issued pursuant thereto are hereby quashed. The writ petitions are allowed in part in the above terms.

(46) Dasti

A..Jain