A STATE OF BIHAR AND ORS.

v.

SACHCHIDANAND KISHORE PRASAD SINHA AND ORS.

JANUARY 16, 1995

B [B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

Constitution of India—Art. 14—Assessment of Annual Rental Value of Holding Rules, 1993—Rule 3(1)(a) and (c)—Patna Municipal Corporation Act—Classification of holding—Notification issued under Rule 3(2) classifying C *"road"—Notification under Rule 5(1) specifying rates of rental value—Validity—Principles applicable in case of taxing enactments and Art. 14—Classification made by Municipal Corporation—A mere possibility of a better classification— No ground to strike down classification made by Rule as discriminatory—Order of High Court striking down clauses (a) & (c) of sub-rule (1) of Rule 3 and also two notification as violative of equality clause—In-*D *supportable in law.*

Having regard to various factors under the scheme of taxation in vogue till the Assessment of Annual Rental Value of Holding Rules, 1993 came into force the government felt that the system provided ample room E **for corruption and arbitrariness. With a view to eliminate such abuse. corruption or arbitrariness that the 1993 Rules were made and notified in the Bihar Gazette. After publication of the same the Patna Corporation issued two notifcations dated September 8, 1992. Under the first notification issued under Rule 3(2), the Corporation classified the roads in Patna city into three categories. In the second notification issued under Rule 5(1),** F **the Corporation has specified the rates of rental value per square foot depending upon the situation, use and nature of construction of the holdings.**

The validity of the 1993 Rules was challenged. The High Court struck G **down clauses (a) and (c) of sub-rule (1) of Rule 3 as being violative of the equality clause enshrined in Article 14 of the Constitution of India. The High Court held that the classifications made under Rule 3(1), in the case roads and in the case of types of construction were wholly inadequate and incomplete and were therefore bound to lead to the result quite unrelated to the actual letting value of the holdings. The High Court suggested an** H **enlargement of the classification. It was then held that the division of the**

municipal corporation area with reference to roads was bad and that it should have been done on the basis of zones. Regarding the two notifications, the High Court found that they were equally indicative of the slip shod manner in which the scheme was sought to be implemented. It was held that so far as the notification issued under Rule 5(1) was concerned, the counter affidavit did not disclose the objective materials that went into consideration for determining the rates.

Dealing with the notification issued under rule 3, the High Court observed that the classification suffered from complete non-application of mind to the details. Accordingly, both the notifications were declared bad and inoperative. This appeal was filed against the order of the High Court.

Allowing the appeal, this Court

HELD : 1.1. 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 objections and manner of taxation but also in the determination of the rate or rates applicable. The objection that the municipal corporation are 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.

[269-E-F]

1.2. The division with reference to roads was not shown to amount to hostile treatment. In case of such classification, there will always be some instances where one gets an advantage and other suffers a disadvantage but that is no ground for invalidating a statute and more particularly a taxing statute. The merit of the Assessment Rules. 1993, is that they rid the house-owners of the harassment and the constant threat of revision of annual rental value by the concerned official of the corporation. 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 any one guarantee that if the municipal corporation area is divided on the basis of zones its will be a perfect classification and would eliminate all complaints and grievances of differential treatment. It is because of the inherent complex nature of

A **taxation that a greater latitude and larger elbow room is conceded to the legislature, or its delegate, as the case may be, in such matters.**

[269-G-H, 270-A-D]

1.3. The grounds upon which the notifications have been invalidated are unsustainable in law. Whereas the percentage of taxation under the B **previous system of taxation was about 43.75% it had been reduce to 9% only. While putting the method of determination of annual rental value on a more uniform basis eliminating room for arbitrariness and corruption, the Corporation has substantially reduced the rate of tax. Taking the instance of a single holding and invalidating the notificatioin on that basis** C **was not a correct approach. [272-B-C]**

Twyfford Tea Company Limited **v.** *State of Kerala*, **[1970] 3 SCR 383;** *R.K. Garg* **v.** *Union of India*, **[1982] 1 SCR 947;** *Secretary of Agriculture Central Reig Refining Company* **94 L. Ed. 381;** *State of Maharashtra* **v.** *M.B. Badiya*, **[1988] Suppl. 2 SCR 482;** *Income Tax Officer, Shillong and Anr. Etc.* **v.** *N. Takim Roy Rymbai etc. etc.*; *Mrs. Meenakshi and Others* **v.** *State* D *of Karnataka*; *Anant Mills Co. Ltd.* **v.** *State of Gujarat and Ors*; *Khandige Sham Bhat and Ors.* **v.** *The Agricultural Income-Tax Officer*; *The State of Jammu and Kashmir* **v.** *Triloki Nath Khosa and Ors.*, **AIR (1974) SC 1;** *Khandige Sham Bhat* **v.** *Agrl. I.T. Officer*, **[1963] 3 SCR 809;** *P.M. Ashwathanarayana Setty* **v.** *State of Karnataka* **[1989] Suppl. 1 696;** *G.K. Krishna* E **v.** *State of Tamil Nadu*, **[1975] 1 SCC 375 and** *San Antonio Independent School District* **v.** *Rodriquez*, **39 L.Ed. 2d. 16, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 772 of 1995.

F From the Judgment and Order dated 4.3.94 of the Patna High Court in C.W.J.C. No. 11234 of 1993.

S.B. Sanyal and B.B. Singh for the Appellants.

S. Muralidhar for the Respondents.

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The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted. Heard counsel for the parties.

H This appeal is preferred against the judgment of the Patna High

Court striking down 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 is of the opinion that the said clauses offend the equality clause enshrined in Article 14 of the Constitution of India.

Sub-section (1) of Section 123 of the Municipal Corporation Act empowers the corporation to impose, with the previous approval of the State Government, the taxes mentioned under clauses (a) to (p) of the said sub-section. We are concerned herein with the taxes mentioned under clauses (a), (b) and (c), viz., "(a) a tax on holdings situated within Patna assessed on their letting value; (b) a water tax assessed on the annual letting value of holdings; and (c) a latrine tax assessed on the annual letting value of holdings". Section 124 prescribes the ceiling beyond which the tax on holdings shall not be imposed. The ceiling prescribed is twelve and a half per cent of the annual value of the holdings. Section 130 defines the expression "annual value of holdings" occurring in sub-section (1) of Section 124. Sub-section (1) of Section 130 says that "save as may be prescribed by the rules made by the State Government, the annual value of a holding shall be deemed to be the gross annual rental at which the holding may reasonably be expected to let". Sub-section (2) deals with a situation where there is a building or buildings on a holding and the actual cost of erection of the same can be ascertained and which building (s) is not intended for letting or for the residence of the owner himself, the annual value of such holding shall be deemed to be an amount which may, subject to the rules made by the Government, be equal to but not exceed twelve and a half per cent of such cost in addition to a reasonable ground rent for the land comprised in the building. Sub-section (3) says that the value of any machinery or furniture which may be a holding shall not be taken into consideration in estimating the annual value of a holding. Section 136 prescribes the procedure following which the corporation shall determine the percentage of the valuation of holding at which tax on holdings shall be levied. It says that subject to provisions of Section 124, the corporation shall, at a meeting to be held before the close of the year preceding the relevant year, determine the percentage of the valuation of holdings at which the tax shall be levied. This has to be done after calling for a report from the Chief Executive Officer and the standing committee and after

A considering the same. The percentage so fixed shall remain in force until the corporation decides otherwise. (The High Court observes in the judgment under appeal that under the scheme of taxation in vogue till the Assessment Rules, 1993 came into force, the rate of taxation had already reached the maximum prescribed rates.) Once the tax is assessed in respect of a holding, it is open to the person dissatisfied with the assessment or
B with the valuation to apply to the Chief Executive Officer or other officer empowered in that behalf by the State Government for a review of the assessment or valuation or to exempt him from the assessment or the tax (*vide* Section 150). Section 227 confers upon the State Gvoernment the power to make rules as to taxation. According to the rules (framed under
C Section 227 read with Section 130) in force prior to the coming into force of the Assessment Rules. 1993, the annual letting value (which is the basis for levying tax on holdings, water tax and latrine tax) was to be determined separately for each individual holding, having regard to various relevant circumstances. The government felt that such a system provided ample room for corruption and arbitrariness and, therefore, it thought of devising
D a system of taxation which would eliminate altogether any room for abuse, corruption or arbitrariness. It is with this view that the 1993 Rules were made and notified in the Bihar Gazette extra-ordinary dated August 12, 1993. A brief reference to these rules is necessary for a proper appreciation of the contentions arising herein.

E Rule 2(b) defines "annual rental value" to mean the rent that a holding is capable of fetheing over a period of one year. Clause (d) and (e) of Rule 2 define the expression 'commercial holding' and 'industrial holding' respectively. Rule 3, which is the rule most relevant for our purposes, provides for classification of holdings. It reads as follows :

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> 3" Classification of holding-- (1) The holding in the Corporation area shall be classified by the Corporation on the following criteria:
>
> (a) Situation of the holding:
>
> G (i) Holdings on the Principal Main Road.
>
> (ii) Holdings on the Main Road.
>
> (iii) Holdings other than sub-clauses (i) and (ii).
>
> H (b) Use of the Holding :

(i) Purely residential;

(ii) Purely commercial or industrial (whether self owned or otherwise);

(iii) partly residential and partly commercial/industrial;

(iv) All holdings other than sub-clauses (i), (ii) and (iii).

(c) Type of construction :

(i) Pucca building with R.C.C. roof.

(ii) Pucca building with asbestos/corrugated sheet roof.

(iii) All other buildings not covered in sub-clauses (i) and (iii).

2. Subject to the approval of the State Government the Corporation may from time to him, publish the list of Principal main roads as well as main roads and if necessary modify the lists of the purposes of these Rules."

Rule 4 provides the manner in which the carpet area has to be calculated. Rule 5 empowers the corporation to fix the rental value and annual rental value. Sub-rule(1) says "the rate of rental value per square foot shall be fixed by the corporation with the prior approval of the State Government having regard to the situation, use and the type of construction of the holdings". Sub-rule (2) of Rule 5 says that the annual rental value shall be computed as a multiple of the carpet area and the rental value fixed under sub-rule (1) while sub-rule (3) says that the "rental value per square foot of the carpet area for different classes of holding shall be published from time to time by the corporation with the prior approval of the State Government". Rule 6 prescribes the rate of tax. It reads thus :

"6. Rate of tax--Tax shall be assessed on the basis of Annual value on the following rates: -

1. Holding Tax--at the rate of 2.5 percent of Annual Rental Value.

2. Water Tax--at the rate of 2% of Annual Rental Value.

3. Latrine Tax--at the rate of 2% of Annual Rental Value."

A Rule 7 empowers the corporation to revise the rate of tax on Annual Rental Value (A.R.V.) with the prior approval of the State Government whereas Rule 8 confers upon the State Government the power to remove difficulties in giving effect to the said rules.

B After publication of the Assessment Rules, 1993 the corporation issued two notifications dated September 8, 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 have been identified as 'Principal main roads', eighty eight have been identified as 'main roads' C while the rest of the roads, streets, lanes bye-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 has specified the rates of rental value per square foot depending upon the situation, use and the nature of contruction of the holdings. To mention a few, the rental value D of a pucca building used for residential purpsoe and situated on a principal main road is fixed at Rs. 18 per sq. ft., for a building meant for commercial use situated on a principal main road, the annual rental value is Rs. 54 per sq. ft.; the rental value of a residential building situated on a main road is fixed at Rs. 12 pre sq ft. and that of a commercial building on a main road at Rs. 36 per sq.ft.; the rental value of residential buildings on roads other E than principal main roads and main roads is fixed at Rs. 6 per sq. ft. and that of a commercial buildings at Rs. 16 per sq. ft.

Several contentions were urged by the writ petitioners (respondents in this appeal) before the High Court, some of which were rejected by the F High Court and some relegated to appeal and other remedies provided by the Act. The court confined its attention to the validity of the Assessment Rules, 1993. The grounds which appealed to the High Court and on the basis of which clauses (a) and (c) of sub-rule (1) were struck down, may best be set out in the words of the High Court itself :

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> "It appears to me that the impugned Assessment Rules were well intended and contained the seeds of a good and reasonable idea which unfortunately floundered for want of proper attention to the details of the schemes. The main shortcoming of the Assessment Rules is that the classifications made thereunder, either in case of H roads or in case of types of constructions are wholly inadequate

and incomplete and are, therefore, bound to lead to results quite unrelated to the actual letting value of holdings. Had the authorities paid proper attention to the details of the scheme, they would have, perhaps, enlarged the classification regarding nature of construction by adding more heads and sub-heads classifying not only the types of construction of the structure but also taking into account other features such as quality of finish, appeartenances, provisions, conveniences and facilities available with a holding. Perhaps, classifying holdings into A, B and C classes depending upon the quality of finish etc. in addition to the types of construction of the structure would have gone a long way in meeting the challenge advanced by the petitioners.

Similarly the three possible heads under which all the roads of Patna are to be classified for determining the locational value of holding is wholly incomplete to say the least. Perhaps, if the authorities had taken care to divide the entire city into different zones or areas and had then proceeded to classify the roads, streets, lanes and gullies in each zone, on an objective basis and under a larger number of head then the petitioners' challenge could have been easily met. The necessity to divided the city into zones, in the case of Patna is best illustrated by Ashok Raj Path. This road, over 10-12 kilometers long runs through the better part of the entire length or the city. It passes through the new parts of the city where markets and shops and the main hospital and the university are located and it also possess through the old and congested city where it narrows down considerably. In the Corporation's notification the whole of Ashok Raj Path has been classified as 'principal main-road'. Now I find it difficult to accept that all holding on this road (either in the commercial class or in the residential class) would have the same rental value regardless of whether they are situated in the new city (commonly), known as Bankinore) or in the old city (commonly known as Patna City). In my view, a road like Ashok Raj Path can only be headled properly by dividing the city into different zones.

However, as the relevant provisions contained in rules 3(1) (a) and (c) stand at present I have no option but to hold and declare that these infringe Article 14 of the Constitution and were *ultra*

A *vires* sections 123 and 130 of the Patna Municipality Corporation Act."

The High Court then took up two notifications and found that they are "equally indicative of the slip shod manner in which the scheme is sought to be implemented" The High Court held that so far as the notification issued under Rules 5(1) is concerned, the counter-affidavit does not disclose "the objective materials that went into consideration for determining the rates". It then referred to the property owned by the respondents which was said to have been let out on a monthly rental of Rs. 1,200 (annual rent of Rs. 14,400) whereas its annual rental value as per the impugned notifications would be Rs. 1,55,520.* The High Court observed that this fact shows the enormous burden placed upon certain house-owners. Dealing with the notification issued under Rule 3, the High Court observed that the classification suffers from "complete inapplication of mind to the details". It opined that classifying Hardinge Road as a principal main road and classifying Desh Ratan Marg (said to be the most prestigious road in the town), Strand road, Circular road in the third category defies logic. It observed, "the very basis said to have been adopted by the Corporation, namely, intensity of traffic and commercial activity appears to be lop sided and unreasonable" and proceeded to say "for consideration of space, I do not propose to dilate on the question of classification of roads made by the Corporation; otherwise the classification appears to be so unreasonable and arbitrary as to be summarily rejected. I only like to observe here that classification for the purpose of taxing statute is a serious business and must be undertaken seriously". Accordingly, both the notifications were declared bad and inoperative. While concluding the High Court observed.:

> "The idea of determining the annual rental value of a holding on floor area basis may not be *per se* bad. It is also understandable that this method has a number of practical advantages over the existing mode of determination of annual rental value of the holding. But before introducing the floor ara method great care must be taken in classification of holding and in the determination of the rate of rental per square foot so that the annual rental value reckoned by this method may at least approximately correspond

* The High Court ought to have noticed that tax on the said holding at the rate of nine per cent (tax on holding, water tax and latrine tax together) would be Rs. 13, 996.80p., a fact set out in the counter filed by the corporation in the High Court.

with the rental the holding may be reasonably expected to fetch in practice. Otherwise, the scheme cannot be held intra vires sections 123 and 130 of the Patna Municipal Corporation Act." A

The State of Bihar and the Patna Municipal Corporation challenge the correctness of the said holding in this appeal. Sicne the rules and the notifications have been struck down on the ground of Article 14 of the Constitution, it is but appropriate to remind ourselves of the relevant principles applicable in the case of taxing enactments and Article 14. B

In *Twyford Tea Company Limited* v. *State of Kerala*, [1970] 3 S.C.R. 383, Hidayatullah, C.J. , speaking for the majority of the Constitution Bench, observed : C

"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 ..... the burdens of proving discrimination is always heavy and heavier still when a taxing statute is under attack..... 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". D

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In *R.K. Garg* v. *Union of India,* [1982] 1 S.C.R. 947, Bhagwati, J., speaking for the Constitution Bench, made the following oft-quoted observations :

"Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of Judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ..... Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws toughing 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 F G H

A which do not admit of solution through any doctraire or straight 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 legislature judgment in the B field of economic regulation than in other areas where fundamental human rights are involved..... The court must always remember that "legislation is directed to practical problems, that the economics mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract C 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 D error method and therefore it cannot provide for all possible situations of 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 Agricultural* v. *Central Reig Refining Company*, (94 E Lawyers' Edition 381) 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 abuse of F its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, however 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 G 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 inspite the legislature in dealing with complex economic issues".

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To the same effect are the observations of a division Bench in *State of Maharashtra* v. *M.B. Badiya*, [1988] Suppl. (2) SCR 482) wherein Sabyaschi Mukharji, J. observed : A

> "About discrimination it is well to remember that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution. But in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion and latitude in the matter of classification for taxation purpose is permissible. See the observations of this Court in *Income Tax Officer, Shillong and Anr. etc.* v. *N. Takim Roy Rymbai etc. etc.*, (supra). Also see the observation in *Mrs. Meenakshi and other* v. *State of Karnataka*, (supra); *Anant Mills Co. Ltd.* v. *State of Gujarat & Ors.*, (supra) and *Khandige Sham Bhat and Ors.* v. *The Agricultural Income-tax Officer*, (supra)." B C

We may also refer in this connection to the very perceptive observations of Chandrachud, J. in *The State of Jammu & Kashmir* v. *Triloki Nath Khosa & Ors.*, A.I.R. (1974) S.C. 1. Adverting to the danger of indulging in minute and micro-cosmic classifications, the learned Judge observed: "let us not evolve, through imperceptible extensions, a theory of classification which may subvert, perhaps submerge, the precious guarantee of equality. The eminent spirit of an ideal society is equality and so we must not be left to ask in wonderment; that after all is the operational residue of equality and equal opportunity?" D E

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. F G H

A 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 R.C.C. 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
B 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
C 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*
D *Company Limited*. The contention was that the Act impugned therein provided for "a uniform rate of tax per hectare which ever 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 unequal's". Repelling the argument, Hidayatullāh, C.J., speaking for the majority, stressed that in such cases "the burden is proving *not* possible 'inequality'
E 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 care 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
F Ambassador taxi and a Fiat taxi gives different outturns in terms of money and mileage. Cinema 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 approach.
G *At this rate nothing can ever be proved to be equal to another*" (Emphasis added).

It is one thing to suggest that the rule-making authority may consider making a further distinction on the lines suggested and an altogether
H 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 R.C.C. 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 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 R.C.C. roof as one class and subjecting them to uniform rate of tax- subject, ofcourse, 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 ares 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 amounted 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 invalidiating 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 house-owners of the harassment and the constant threats of revision of annual rental value by the concerned officials of the corporation. The earlier system of taxation left too much discretion in their hands.

A B C D E F G H

A 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 revisions 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 house B owners-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 known 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 C corporation nor can any one guarantee that if the municpal 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 D the case may be - in such matters. Dealing with a similar objection, this court said in *Khandige Sham Bhat* v. *Agrl. I.T. Officer*, [1963] 3 S.C.R. 809:

> "It is suggested that a more reasonable course would have been to tax the assessees in the Madras area for the income that accrued to them during the 5 months by treating the said income as the E income for the entire year commencing from April 1, 1956 and ending on March 31, 1957 and that in that even not only their income for the said period could not have escaped taxation but it would have also avoided the unjust treatment meted out to them in the rate of tax. *Prima facie* there appears to be some plausibility F in this argument; but a closer examination discloses that though the method suggested may have been better than the methods actually adopted, the hardship in individual cases cannot in any event be avoided. It is true taxation law cannot claim immunity from the equality clause of the Constitution. The taxation clause shall also not be arbitrary and oppressive, but at the same time G the Court cannot, for obvious reasons, meticulously scrutinize the impact of its burden on different persons or interests. Where there is more than one method of assessing tax and the legislature selects one out of them, the Court will not be justified to strike down the law on the ground that the legislature should have

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adopted another method which, in the opinion of the Court, is more reasonable, unless it is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust." A

Reference may also be had to the recent decision of this Court in *P.M. Ashwathanarayana Setty* v. *State of Karnataka*, [1989] Suppl. 1 696, where Venkatachaliah, J., speaking for the court made the following pertinent observations: B

"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 fiscal services. In *G.K. Krishnan* v. *State of Tamil Nadu*, [1975] 1 S.C.C. 375, this Court referred to, with approval, the majority view in *San Antonio Independent School District* v. *Rodriguez*, 39 L.ed. 2d. 16 speaking through Justice Stewart: C D

'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 scheme become subjects of criticism under the Equal Protection clause ..... E

The observations of this Court in *ITO* v. *K.N. Takin Roy Rymbai*, [1976] 1 S.C.C. 916 made in the context of taxation laws are worth recalling : F

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

We are, therefore, of the opinion that grounds upon which clauses (a) and (c) have been invalidated are insupportable in law. H

A Coming to the impunged notifications issued by the corporation, we are equally of the opinion that the grounds upon which the notifications have been invalidated unsustainable in law. It is the common case of both the parties that whereas the percentage of taxation under the previous system of taxation was about 43.75% it has now been reduced to 9% only. While putting the method of determination of annual rental value on a B more uniform basis eliminating room for arbitrariness and corruption, the corporation has substantially reduced the rate of tax. We are unable to see any room for legitimate grievance on this account. Taking the instance of single holding and invalidiating the notification on that basis is not correct approach. Insofar as the holding of the respondents referred to in Para C (25) of the High Court's judgment is concerned, it is stated in the counter-affidavit filed in the High Court that the carpet area of the said holding is 2,880 sq. ft. (after giving the exemptions as provided by the rules) and that it has been put to commercial use, being let out as shops. It is also stated that besides shops, there is a residential hotel, called Sunway Hotel. The D respondents-writ petitioners say that the monthly rental of the entire building is only Rs. 1,200 which appears to us wholly unaceptable. It is difficult to believe that any tenament in Patna city with 2,880 sq. ft. of carpet area, having commercial value and situated on one of the principal main roads of the city would fetch a rent of Rs. 1,200 only. It is not stated by the respondent-writ petitioners that this low rent is because of the E applicability of the Rent Control Act and the fixation of fair rent. But for the applicability of the Rent Control Act and fixation of fair rent thereunder, it is difficult to believe the respondents' case that property of the above nature and dimensions would fetch such a low rent. According to the impugned rules and notification, its annual rental value is determined F at Rs. 1,55,520 (annual tax of Rs. 13,996.80p. at the rate of nine per cent) which in the circumstances cannot be said to be either excessive or unreasonably high. We have dealt with this particular instance because the High Court has made it a ground for invalidating the notifications and not for any other reason.

G Sri Muralidhar, learned counsel for the respondents submitted that rules and the notifications do not take into account building which are covered by the Rent Control Act and that where the said Act applies, the rent cannot be enhanced except to a limited extent provided by the Act and that in such cases the said rules and notifications operate with undue H harshness. But no such argument was addressed before the High Court nor

it has been dealt by it. We, therefore, do not propose to express any opinion on the said submission, nor with the reply given by the learned counsel for the appellants to the said submissions. A

Sri Muralidhar also submitted that no notification was issued under Section 134 of the Act with respect to Circle VIII-A in which the respondents' holding is situated. The High Court has declined to entertain the said plea on the ground that it can always be raised in the appeal and other remedies provided by the statute. We are in agreement with the High Court. We too have confined our attention only to the validity of the rules and the notifications as the High Court had done, leaving other question is to be agitated in an appropriate forum at the appropriate stage. B C

For the above reasons, the appeal in allowed and the judgment of the High Court is set aside. No costs.

A.G. Appeal allowed. D