Vijay Mills Company Limited Etc., Etc. vs State Of Gujarat And Others on 4 December, 1992

Equivalent citations: AIR1994SC1114, 1992(3)SCALE315, (1993)1SCC345, [1992]SUPP3SCR324, AIR 1994 SUPREME COURT 1114, 1993 (1) SCC 345, 1994 AIR SCW 1271, 1992 ( ) JT (SUPP) 30, (1992) 3 SCR 324 (SC), 1992 (3) SCR 324

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Bench: P.B. Sawant, N. Venkatachala

ORDER

P.B. Sawant, J.

1. The facts leading to the common questions of law which arise in these appeals may be taken from one of the appeals, viz., Civil Appeal No. 82 of 1985. The appellant-Company holds a large parcel of land admeasuring about 2 lakh square metres comprising 30 different survey numbers of Asarwa Ward of the Ahmedabad Municipal Corporation. Prior to 1st August, 1976, these lands were assessed as non-agricultural lands, at the rate of 2 paise per square metre under Rule 8(2) of the Gujarat Land Revenue Rules, 1972 [the '1972 Rules'] which was in force at that time. The said Rules were made under Section 214 of the Bombay Land Revenue Code, 1879 [the 'Code'] as applicable to the State of Gujarat. At that rate, the Company paid a total land revenue of Rs. 5,823.23 per annum. It also appears that the Company paid in addition to the land revenue local fund cess and education cess each of which was calculated at the rate of 50 per cent of the amount of the land revenue.

2. On 21st July, 1976, the State Government published draft rules amending 1972 Rules. The principal amendment related to the rate of the assessment of the non-agricultural land whereby the erstwhile rate of 2 paise was raised to 15 paise per square metre. The amendment also classified the assessable lands on the basis of their locations, viz., whether they were in villages, towns and cities, and on the basis of the population of the area and the non-agricultural user to which the land was being put. The State Government invited objections to the draft rules before 30th July, 1976. Since no objections were received, the State Government made the draft rules final and published them on 31st July, 1976 bringing them into force w.e.f. 1st August, 1976. Several writ petitions challenging the said rules were filed in the High Court. One of the contentions in the petitions was that sufficient time was not given to raise objections to the draft rules. During the tendency of the writ petitions, the State Government on 28th June, 1977 withdrew the notification dated 31st July, 1976 issuing the

final rules, and granted time of one month from 28th June, 1977 to the members of the public to object to the draft rules published on 21st July, 1977. After considering the objections received, the State Government issued a fresh notification on 24th January, 1978 issuing final rules which were brought into force with retrospective effect from 1st September, 1976 [the '1977 Rules']. Under the 1977 Rules, the rate of assessment was increased from 2 paise to 10 paise per square metre [thus reducing the rate of assessment to 10 paise from 15 paise per square metre which was fixed under July 1976 Rules].

3. On 10th December, 1980, by an ordinance the State Government also amended Section 214 of the Code to enable the Government to give the rules made thereunder a retrospective effect. The Ordinance became an Act on 24th February, 1981.

4. The writ petitions leading to the present appeals were filed before the High Court challenging the validity of 1977 Rules on various grounds. However, ultimately, only the following issues were pressed before the High Court:

> (3.) Whether the oppugned Amendment Rules of 1977 are bad in law and void since they seek to levy revenue on the land used for non-agricultural purposes retrospectively, that is, with effect from 1st September, 1976 without the power or authority to enact the rules retrospectively under Section 214 of the Code at all the relevant times.
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> (4). Whether the attempt to validate the levy, assessment and collection of the non-agricultural assessment by the Gujarat Ordinance No. 20 of 1980 or for that matter by the Gujarat Act No, 2 of 1981 was to all intent and purposes abortive.
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> (5). Whether the impugned Amendment Rules of 1977 are ultra vires Section 48 and/or Section 45 and/or Section 52 of the code.
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> (6). Whether the impugned Amendment Rules of 1977 are violative of Article 14 of the Constitution of India inasmuch as they are arbitrary, unjust and discriminatory.
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> (7). In any view of the matter proviso to Rule 81(2) of the impugned Amendment Rules of 1977 enjoining the assessment of the land, with effect from 1.8.1979, situate within the urban agglomerations to which the urban Land [Ceiling & Regulation] Act, 1976 applies, at double the rates prescribed in Table "A" for not putting such land to non-agricultural use for which permission is granted or deemed to be granted is ultra vires Article 14 of the Constitution. We will take up for consideration the first four points simultaneously since they are interconnected.

The High Court answered issues Nos. 3 to 6 against, and issue No. 7 in favour of the appellants and struck down Rule 81(2) of Amendment Rules of 1977. It is against the said decision that the present appeals are filed.

5. The following contentions are raised before us by Shri Nariman on behalf of the appellants :

> 1. 1977 Rules promulgated on 24th January, 1978 and brought into force retrospectively from 1st September, 1976 are ultra vires and void to the extent that they retrospectively impose a higher rate of land revenue on land used for industrial purpose. Section 214 of the Code did not give the State Government power to frame rules with retrospective effect. The Bombay Land Revenue [Gujarat Amendment and Validation] Ordinance [which later became an Act] amending Section 214 of the Code though gave the State Government a power to make rules with retrospective effect, Section 214 itself was not substituted with retrospective effect but only came into force on 24th February, 1981. Hence, the validation of the Section is ineffective in so far as it seeks to confer power on the State Government to make rules with retrospective effect from a date anterior to 24th February, 1981.
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> 2. The retrospective imposition of land revenue is arbitrary, unreasonable and irrational and, therefore, violative of the appellants' fundamental rights under Articles 14 and 19(1)(g) of the Constitution. In so far as the rules levied different rates of land revenue depending upon whether they were situate in cities, towns and villages with different size of population, they are ultra vires Section 48 of the Code.
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> 3. The Amendment Rules are violative of Article 14 also on the ground that the geographical classification made therein for the purposes of levying different rates of assessment has no nexus with land revenue, i.e., user of land as opposed to the value of land. The classification has no rational relation with the object of imposing the land revenue and, therefore, also the classification was bad in law.

6. On behalf of the respondent-State Government, Shri Poti, the learned Counsel defended the validity of 1977 Rules contending that the amendment of Section 214 of the Code to vest the power in the State Government to make rules with retrospective effect was valid in law and hence 1977 Rules which enable the Government to assess the land with retrospective effect from 1st September, 1976 were valid. He further contended that the classification of the land for the purpose of the assessment was necessary and the assessment can be made on the return of the land as well as on the capital value. The section does not prohibit such classification. He submitted that the retrospectivity of the operation of the rules was valid in the present case since revision of the assessment was undertaken after years. His further contention was that the present classification was on the basis of population and not on the basis of geography. However, according to him even a classification on the basis of geography was also valid.

7. As regards the first contention, Section 214 of the Code before its amendment in 1981 read as follows:

> 214 (1). The State Government may, by notification published in the Official Gazette, make rules not inconsistent with the provisions and objects thereof and for the guidance of all persons in matters connected with the enforcement of this Act or in

cases not expressly provided for therein.

(2). In particular, and without prejudice to the generality of the foregoing power, such Rules may be made-

...

(b) regulating the assessment of land to the land revenue and the alterations and recovery of land revenue....

...

(3) The power to make Rules under this section shall be subject to the condition of previous publication.

The section was amended by the Ordinance dated 10th December,. 1980 by inserting Clauses (3) and (5), among others, which read as follows-

3. Amendment of Section 214 of Bom. V of 1879. In the principal Act, in Section 214, in Sub-section (1) for the words 'make rules' the words 'make, whether prospectively or retrospectively, rules' shall be substituted.

5. Validation of certain rules - Any rule made retrospectively under Section 214 of the principal Act, before the commencement of this Ordinance shall be and shall be deemed always to have been validly made in accordance with law, as if the principal Act had been in force as amended by this Ordinance at all material times when such rule was made and any such rules or anything done or action or proceeding taken or purported to have been done or taken under such rule, shall not be called in question in any court or before any officer or authority whatsoever merely on the ground that such rule was made retrospectively without power to do so or that such thing was done or action or proceeding was taken or purported to have been done or taken under such rule.

8. The Ordinance was followed by Act No. 2 of 1981 which was placed on the statute book w.e.f. 24th February, 1981 and Sections 2 and 4 thereof correspond to Clauses (3) and (5) of the Ordinance.

The effect of the amendment was that the Government acquired powers to make rules under Section 214 which would have both prospective as well as retrospective operation. Secondly, the power to make the rules whether prospective or retrospective in operation could also be deemed to have been given to the Government from the date any rules made under Section 214 were given retrospective operation. In other words, Section 214 as amended would always be deemed to have been in existence from a date from which any rule made before the amendment was made retroactively operational,

9. However, the argument on behalf of the appellant is that Section 214 itself was not substituted with retrospective effect but came into force as amended only on 24th February, 1981. Hence, it is

contended that the validation of the rules is ineffective in so far as it seeks to confer power on the State Government to make rules with retrospective effect from a date anterior to 24th February, 1981. In support of this contention, Shri Nariman appearing for the appellant relied upon Janapada Sabha, Chhindwara etc. v. The Central Provinces Syndicate Ltd. and Anr. etc. , State of Tamil Nadu v. Thirumagal Mills Ltd. etc. Raj Kumar v. Union of India and Ors. . Before we deal with the said decisions, it will be helpful to recapitulate the law on validation generally.

10. In Mohammadbhai Khudabux Chhipa and Anr. v. The State of Gujarat and Anr. [1962] Supp. 3 SCR 875, one of the grounds on which the Validation Ordinance was challenged was that inasmuch as Sections 11 and 5 A of the Act and the rules impugned were not retrospectively amended by the Ordinance, the purpose of the Validating Ordinance was not achieved and it was, therefore, not effective. Repelling this contention, this Court, speaking through Wanchoo, J. ruled in paragraph 12 of the judgment as under :

> (12) The contention on behalf of the petitioners is that these provisions are insufficient to validate the defects which were noticed in the earlier judgment of this Court inasmuch as the relevant provisions of the Act and the Rules have not been retrospectively amended. We see no force in this argument for the provisions as they stand certainly validate the defects pointed out in the earlier judgment of this Court. It is true that the relevant sections and the Rules have not been retrospectively amended by the Ordinance, but this in our opinion was unnecessary. Retrospective amendment may be necessary when it is desired to change the law; but it seems that so far as Section 11 is concerned the legislature did not intend that the control of the State Government over levy of fees should be done away with for the future also. Therefore, all that was necessary in that respect was to validate the past actions and this is specifically provided for by Sub-section (2) and (3) of Section 29-B. As for the establishment of market committees an amendment has been made in Section 5-AA of the Act deleting the provision by which a market could be established only if so required by the State Government. This amendment is prospective. It could have been made retrospective also and in that case Sub-section (1) of Section 29-B may not have been necessary. The legislature, however, adopted the method of amending Section 5-AA prospectively and making a separate provision for validating the establishment of markets in Sub-section (1) of Section 29-B. We see no reason why it should be held that the validation made by Sub-section (1) is not sufficient because the legislature has adopted one method rather than the other for carrying out its purpose. We are, therefore, of opinion that Section 29-B is sufficient to cure the defects pointed out in the earlier judgment of the court and to validate actions taken and things done before the promulgation of the Ordinance which would otherwise have been invalid in view of the earlier judgment of this Court. The contention on this head must also be rejected.

11. In State of Madhya Pradesh and Ors. v. V.P. Sharma and Ors. , the contentions were that (1) by seeking to validate past transactions of a kind which had been declared invalid by this Court without retrospectively changing the substantive law under which the past transactions had been effected

the legislature was encroaching over the domain of the judicial power vested by the Constitution in the judiciary exclusively; (2) the Validating Act did not revive the notification under Section 4 which had become exhausted after the first declaration under Section 6 and no acquisition following thereafter could be made without a fresh notification under Section 4.

12. Repelling these challenges, the Constitution Bench by majority held as follows:

> (i) The American doctrine of well defined separation of legislative and judicial powers has no application to India and it cannot be said that an Indian Statute which seeks to validate invalid actions is bad if the invalidity has already been pronounced upon by a court of law.
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> (ii) The absence of a provision in the amending Act to give retrospective operation to Section 3 of the Act does not affect the validity of Section 4. It was open to Parliament to adopt either course e.g., (a) to provide expressly for the retrospective operation of Section 3, or, (b) to lay down that no acquisition purporting to have been made and no action taken before the Land Acquisition [Amendment and Validation] Ordinance, 1967, shall be deemed to be invalid or even to have become invalid because, inter alia, of the making of more than one declaration under Section 6 of the Land Acquisition Act, notwithstanding any judgment decree or order to the contrary. Parliament was competent to validate such actions and transactions, its power in that behalf being only circumscribed by appropriate entries in the Lists of the Seventh Schedule and the fundamental rights set forth in Part III of the Constitution. Section 4 of the Amending Act being within the legislative competence of Parliament, the provisions thereof are binding on all courts of law notwithstanding judgments, orders or decrees to the contrary rendered or made in the past.

13. In Shri Prithvi Cotton Mills Ltd. and Anr. v. Broach Borough Municipality and Ors. a somewhat similar situation, as obtaining in the present case, arose. Broach Borough Municipality constituted under the provisions of the Bombay Municipal Boroughs Act, 1925 purporting to act under Section 73 of the said Act and the Rules made thereunder, imposed rate on land and buildings belonging to Prithvi Cotton Mills at a certain percentage of the capital value in the assessment years 1961-62 to 1963-64. Section 73 of the Boroughs Act allowed the Municipality to levy a rate on buildings over lands or both situate within a Municipal Borough. The assessment lists were published and the tax was imposed according to the rates calculated on the basis of the capital value of the property of the Mill-company, and the bills raising demand were served on the company which moved the High Court for appropriate writs, orders and directions to quash and set aside the assessment under Article 226 of the Constitution. During the pendency of the writ petition, the Gujarat Legislature passed the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963 with the result that the company amended the writ petition questioning the Validation Act which was also challenged by the company by a separate substantive application. Both the writ petitions were dismissed by the High Court though a certificate of fitness was granted for appeal to this Court.

Section 3 of the Validation Act provided that notwithstanding anything contained in any judgment, decree or order of a Court or Tribunal or any other authority, no tax or rate assessed by a Municipality on the basis of the capital value of a building or land, or on the basis of a percentage of such capital value, and imposed, collected or recovered by the Municipality before the commencement of the Act shall be deemed to have been invalidly assessed, imposed, collected or recovered by the reason of assessment being made on the basis of the capital value or percentage thereof and not being based on annual letting value, and the imposition, collection and recovery of such tax or rate shall be valid and shall be deemed always to have been valid and shall not be called in question merely on the ground that the assessment is on the basis of the capital value, and the Municipality shall be entitled to collect or recover any tax or rate so assessed before the commencement of the Act in accordance with the relevant municipal law and the rules made thereunder. It should, therefore, be noted that the Validation Act, without amending the empowering Section 73 of the Corporation Act and Rule 350-A of the Rules providing for the rate of the levy, sought to validate the assessment, imposition, collection and recovery. It is in this context that the Validation Act was challenged. The observations of this Court, speaking through Hidayatullah C.J. about the features of the validating statutes in general are instructive. They read as under:

> 4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a legislature sets out to validate a tax declared by a Court to be legally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon Courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the Court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject matter and competence to make a valid law, it can at any

time make such a valid law and make it retrospectively so long as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the Courts had found in existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

After setting out generally the features of validating statutes, this Court examined as to whether the Legislature had the power to impose tax. It found that under Section 99 of the Boroughs Act, the Municipality was empowered to impose a tax on buildings situate within the municipal borough on the basis of annual letting value or capital value or percentage on capital value thereof. The Court also noted that Section 99 was within the State legislative competence in view of entry 49 of List II of the Seventh Schedule to the Constitution providing for taxes on lands and buildings which included a tax on lands or buildings on the basis of capital value. The Court thereafter noted that Section 73 of the Borough Act had authorised the levy of a rate only and not a tax on lands and buildings on the basis of capital value. The Court also referred to its earlier decision in Patel Gordhandas Hargovandas's case [supra] that the Municipality under the Boroughs Act had no power to fix a rate on the basis of capital value since the word "rate" had acquired a special meaning in the legislative practice. The Court thereafter observed as under:

> 6. ...Faced with this situation the legislature exercised its undoubted powers of redefining 'rate' so as to equate it to a tax on capital value and convert the tax purported to be collected as a 'rate' into a tax on lands and buildings. The legislature in the Validation Act, therefore, provided for the following matters. First, it stated that no tax or rate by whichever name called and laid on the capital value of lands and buildings must be deemed to be invalidly assessed, imposed, collected or recovered simply on the ground that a rate is based on the annual letting value. Next it provided that the tax must be deemed to be validly assessed, imposed, collected or recovered and the imposition must be deemed to be always so authorised. The legislature by this enactment retrospectively imposed the tax on lands and buildings based on their capital value and as the tax was already imposed, levied and collected on that basis, made the imposition, levy, collection and recovery of the tax valid, notwithstanding the declaration by the Court that as 'rate' the levy was incompetent. The legislature not only equated the tax collected to a tax on lands and buildings, which it had the power to levy, but also to a rate giving a new meaning to the expression 'rate' and while doing so it put out of action the effect of the decisions of the Courts to the contrary. The exercise of power by the legislature was valid because the legislature does not possess the power to levy a tax on lands and buildings based on capital value thereof and in validating the levy on that basis, the implication of the use of the word 'rate' could be effectively removed and the tax on lands and buildings imposed instead. The tax, therefore, can no longer be questioned on the ground that Section 73 spoke of a rate and the imposition was not a rate as properly understood but a tax on capital value....

14. In Hari Singh and Ors. v. The Military Estate Officer and Anr. , it was held by majority that (a) in Northern India Caterers Pvt. Ltd. and Anr. v. State of Punjab and Anr. , this Court held that Section 5 of the Punjab Premises and Land [Eviction and Rent Recovery] Act, 1959, was violative of Article 14 of Constitution on the ground that the section left it to the unguided discretion of the Collector to take action either under the ordinary law or follow the drastic procedure provided by the section. Assuming that 1958 Act is unconstitutional on the same ground it could not be contended that 1971 Act could not validate anything done under 1958 Act, because 1971 Act is effective from 16th September, 1958, and provides that the action taken under 1958 Act is deemed to be taken under 1971 Act. It is not a case of the later Act validating action taken under the earlier Act, but a case where by a deeming provision, acts or things done under an earlier Act were deemed to be done under the later Validating Act. (b) The Legislature had competence to enact 1971 Act and provide a speedy procedure only available and thus remove the vice of discrimination found in Northern India Caterers case (supra). (c) The Legislature can put out of action retrospectively one of the procedures leaving one procedure only available and thus remove the vice of discrimination found in Northern India Caterers case (supra).

15. From the above, it is clear that there are different modes of validating the provisions of the Act retrospectively, depending upon the intention of the legislature in that behalf. Where the legislature intends that the provisions of the Act themselves should be deemed to have been in existence from a particular date in the past and thus to validate the actions taken in the past as if the provisions concerned were in existence from the earlier date, the legislature makes the said intention clear by the specific language of the validating Act. It is open for the legislature to change the very basis of the provisions retrospectively and to validate the actions on the changed basis. This is exactly what has been done in the present case as is apparent from the provisions of Clauses (3) and (5) of the Amending Ordinance corresponding to Sections 2 and 4 of the Amending Act No. 2 of 1981. We have already referred to the effect of Sections 2 and 4 of the Amending Act. The effect of the two provisions, therefore, is not only to validate with retrospective effect the rules already made but also to amend the provisions of Section 214 itself to read as if the power to make rules with retrospective effect were always available under Section 214 since the said section stood amended to give such power from the time the retroactive rules were made. The legislature had thus taken care to amend the provisions of the Act itself both to give the Government the power to make the rules retrospectively as well as to validate the rules which were already made.

16. Shri Nariman, however, relied upon the following decisions of this Court to contend that the amendment made by the legislature was not enough inasmuch as Section 214 was not itself substituted with retrospective effect but came into force only on 24th February, 1981 when the Amending Act was enacted.

17. In Janapada Sabha case (supra) on which Shri Nariman relied, we find that the Amending Act of 1964 did not disclose either the context or even the nature of the amendment. Secondly, it was limited in its application only to one local board, viz., Chhindwara Local Board which had enhanced the cess without the Government's permission when the principal Act of 1920 applied to all local boards. Thirdly, the Amending Act applied only to three notifications under which the Chhindwara Local Board had enhanced the cess from time to time. The power given by the Amending Act to

enhance the cess was not general. In these circumstances, it was held that the Act so limited in its application could not repeal the sub-section of the principal Act which applied to all local boards. Further, the Amending Act did not say that the notifications which were issued by the Chhindwara Local Board without the sanction of the Government must be deemed to have been issued validly. Such an intendment has to be express and cannot be implied. The Court held that it was a case of a clumsy drafting and that it was open to the legislature within certain limits to amend the provisions of an Act retrospectively to declare what the law shall be deemed to have been. For the legislature in that case attempted to over-rule the decision of the Court without amending the provisions of the Act giving the power to the board to levy the cess with retrospective effect. It would thus be evident from this case that it has no application to the facts of the present case.

18. In Thirumagal Mills case (supra), the assessee was a spinning mill. It opened a fair price shop to provide an amenity to its workmen so that commodities could be made available to them at fair prices. For the assessment year 1960-61, the assessing authority under the Madras General Sales Tax Act, 1959 included in the assessee's turnover the sale value of groceries sold in the fair price shop. The Tribunal held in favour of the assessee and the High Court on reference found that the assessee was not carrying on "business" within the meaning of the provisions of the Act in the fair price shop and confirmed the orders. In appeal to this Court, the State contended that the Amending Act of 1964 substituted a new definition of "business" in the Act which read with Section 9 of the Act, had retrospective effect. While dismissing the appeal, this Court held that validation of tax which has been declared to be illegal may be done only if the ground of illegality or invalidity are capable of being removed and are in fact removed. The legislature can give its own meaning and interpretation of law under which the tax was collected and by legislative flat make a new meaning binding upon the courts. But in that case, none of the methods for validating the tax had been adopted. Although the definition of "business" was amended, it was not made retrospective by the usual words that "it should be deemed to have been always substituted" nor was any other language employed to show that the substantive provision was being amended retrospectively. On the contrary, the definition of the word "business" was amended only prospectively. The Court, therefore, held that in the absence of retrospective effect being given to the definition, Section 9 of the Act was of no avail to the Revenue. This case again is of no avail to the appellants.

19. In Raj Kumar's case (supra), the services of the appellants, a Government servant, were terminated forthwith and he was ordered to be paid a month's pay and allowances. It appears that the Central Civil Services [Temporary Services] Rules, 1965 were amended with retrospective effect from 1st May, 1965. The effect of the Amendment was that on and from 1st May, 1965 it was not obligatory "to pay" the appellants a sum equivalent to the amount of his pay and allowances for the period of notice. A Government servant was only entitled "to claim" such amount. The dismissal of the appellant took place on 15th May, 1965. Hence, the contention of the appellant that he was not paid the amount in question at the time of terminating his services and, therefore, the termination was illegal was rejected by this Court. One of the contentions advanced on behalf of the appellant was that there was no validating provision in the rule as amended and, therefore, the intention of the Government in making the amendment could not be validly given effect to. While repelling this contention, this Court held that once a law is given retrospective effect as from a particular date, all actions taken under the Act even before the amendment was made, would be deemed to have been

taken under the Act as amended and there could be really no question of having to validate any action already taken provided it is subsequent to the date from which the amendment is given retrospective effect. The question of the particular form of the validation would always depend on the circumstances of a case and no general formula can be devised for all circumstances. Thus the view taken in this case is against the contention advanced on behalf of the appellants.

The contention that the Validating Act cannot validate rules made or acts done prior to the date it was enacted, if accepted, will strike at the very root of the concept of retrospective validation. Law is an instrument which is forged to regulate the affairs of the society. Society can mould it to meet the needs felt from time to time. Society cannot be a slave of the instrument. The device of validating a statute is forged precisely to adopt the law to meet the exigencies of the situations. The validation, therefore, may be done in the manner required by the needs of the tune. All that is required is that the agency which validates the statute must have the power to do it. The manner and method of doing it is to be left to the authority. If the intentions are clear, the validation has to be interpreted according to the intentions. The courts have in fact upheld such validation regarding it to be an important weapon in the armoury of legislative devices. It is to emphasise this aspect that we have endeavoured to summarise the law on validation as above, at the cost of lengthening the judgment.

We, therefore, find no substance in Shri Nariman's contention that since the Amending Act came into force only on 24th February, 1981, Section 214 of the Code as amended cannot be said to have been substituted for the original section with retrospective effect. The law on the subject makes it clear that to give retrospective effect to the amended provisions it is enough if the Amending Act states that the said provisions will always be deemed to have been incorporated in the original provisions with retrospective effect from a particular date. This is exactly what has been done in the present case. Hence, the first contention of the appellants must fail.

20. Coming to the second contention, as the facts narrated earlier show, for a long time the rate of assessment of the revenue on the non-agricultural land was not revised. It was after a long interval that a draft notification was issued on 21st July, 1976 making the rules in question under which the assessment was revised. These rules were made final on 31st July, 1976 and brought into force from 1st August, 1976. Since the same were challenged, among other things, on the ground that no sufficient time was given for raising objections to the draft rules, the notification dated 31st July, 1976 making the rules final was withdrawn by a subsequent notification of 28th June, 1977 and objections were invited to the original draft rules issued on 21st July, 1976 within 30 days from 28th June, 1977. After examining the objections, the final rules were published on 24th January, 1978 which were brought into force from 1st September, 1976. Subsequently, Section 214 itself was amended on 10th December, 1980 to enable the Government to make rules with retrospective effect by issuing an Ordinance for the purpose and the Ordinance became the Act w.e.f. 24th February, 1981.

What is further, so far as the industrial use of the land in towns and cities like Ahmedabad was concerned, the original rate of assessment prescribed under the draft rules of 21st July, 1976, viz., 15 paise per square metre was reduced to 10 paise per square metre under the impugned rules published on 24th January, 1978 which rules were brought into force w.e.f. 1st September, 1976.

These facts will show that right from 21st July, 1976, the assessees were aware of the fact that the rate of assessment was sought to be enhanced. They were also given two opportunities to raise their objections to the enhanced assessment. Whatever may be the merit with regard to the first opportunity, the second opportunity was admittedly fair. After considering the objections, the rate of assessment was in fact reduced. As has been stated earlier, even this rate of assessment was fixed after a long lapse of time during which incomes, prices of products, levels of profits, rentals of lands, inflation and the cost of maintenance and providing services had gone up enormously. It is, therefore, not possible to accept the contention that either the enhancement in assessment was made without following the principles of natural justice or that it was arbitrary or unreasonable. This part of the contention must, therefore, fail.

21. Reliance placed on certain observations in the decisions of this Court in Madan Mohan Pathak v. Union of India and Ors. etc. and Lohia Machines Ltd. and Anr. v. Union of India and Ors. in support of the contention that the present assessment is arbitrary, unreasonable and irrational is in the facts and circumstances of the case misplaced. In Madan Mohan Pathak's case (supra), the learned Chief Justice concurring with the majority, was commenting upon the legislation made by the Parliament which had the effect of depriving the employees of the Life Insurance Corporation of the benefits of a settlement arrived at and assented to by the Central Government under the provisions of the Industrial Disputes Act, 1947. It is in that context that the learned Judge stated that such settlement should not be set at naught by an Act designed to defeat its provisions and if that is the purpose of the Act which was evident, it could very well be said to be contrary to public interest and not protected by Article 19(6) of the Constitution. In Lohia Machines case (supra), Rule 19A made under the Indian Income-Tax [Computation of Capital of Industrial Undertakings] Rules, 1949 which brought about material alteration in the texture of Rule 19 of the said Rules in the matter of computation of capital had been challenged as being in conflict with Sub-section (1) of Section 80J of the Income Tax Act. Different High Courts took different view with regard to the validity of the said rule. Hence, the Government of India amended Section 80J in 1980 by introducing Sub-section(1A) in the same terms as Rule 19A. It was with reference to the challenge to the Amending Act which gives retrospective effect to Sub-section (1A) from 1.4.1972 that it was observed, among other things, as follows:

> The present amendment has been necessitated not as a result of any part of Section 80J being declared invalid. There was no lacuna or defect in Section 80J prior to the impugned amendment and the section which was perfectly valid granted relief in clear and unambiguous language to the assessee in respect of capital employed, whether assessee's own or borrowed, in an undertaking which qualified for relief under the section. The rule making authority by framing an invalid rule sought to deny the assessee the benefit of the relief lawfully and validly granted by the section. The rule was contrary to the clear provisions of the statute and the invalid rule has been rightly struck down. By the present amendment the Parliament is seeking to validate not any provision of the State [sic] declared invalid because of any flaw or defect, as there was none, but is seeking to validate an invalid rule which had sought to deprive the assessee of the benefit which the Parliament had clearly bestowed on the assessee by the section. The effect of the present amendment by seeking to

incorporate the provisions of the rule declared invalid in the section itself is to withdraw with retrospective effect the relief which had been earlier granted by the parliament in so far as the relief extends to borrowed capital employed in the undertaking and thereby to impose on the assessee a burden of tax which was not there for all these years. As a matter of policy it may be open to the Parliament to withdraw the relief granted to borrowed capital by an amendment with prospective effect consequent on any such amendment. To withdraw with retrospective effect the benefit of relief unequivocally granted by the section to an assessee who qualified for such relief and was lawfully entitled to enjoy the benefit of such relief and has in fact in many cases enjoyed the benefit for all these years, prior to the present amendment with retrospective effect, cannot, in my opinion, be said to be on any just and valid grounds and cannot be considered to be reasonable. If any fiscal statute grants relief to any assessee and the assessee enjoys the benefit of that relief, as the assessee is legally entitled under the statute, the withdrawal of the relief validly and unequivocally granted and enjoyed by any assessee must necessarily in the absence of proper grounds be held to be unreasonable and arbitrary. The relief granted under Section 80J before the present amendment was not merely a promise on the part of the Government relying on which the assessee might have set up new undertakings, but it was in the nature of a statutory right conferred on any assessee who qualified for such relief under the section. The withdrawal with retrospective effect of any relief granted by a valid statutory provision to an assessee, depriving the assessee of the benefit of the relief vested in the assessee, stands on a footing entirely different from the footing which may necessitate the passing of a Validating Act seeking to validate any statutory provision declared unconstitutional. When Parliament passes an amendment validating any provision which might have been declared invalid for some defect or lacuna, the Parliament seeks to enforce its intention which was already there by removing the defect or lacuna. The Parliament indeed seems to remedy the situation created as a result of the statutory provision being declared invalid.

It would thus be apparent that these observations made on the facts of the case have no relevance to the present facts. On the other hand, they support the action of the legislature in the present case inasmuch as the Validating Act in the present case has made clear what the legislature wanted to do, viz., to validate the rate of assessment which was levied for the first time after a long lapse of time. The rate of assessment was enhanced with due notice to the assessees of its prospective impact. After examining the objections, the rate was in fact reduced with retrospective effect. We are also not impressed by the fact that because the rate of assessment has been increased by five times the rate prevalent prior to 1st September, 1976, the rate should be held to be either excessive or unreasonable. Considering the time lag, the reduction in the purchasing power of the rupee, the increase in the cost of providing services and also considering the user of the land, the rate of 10 paise per square metre cannot be said to be excessive.

22. Coming to the third contention, it proceeds on the footing that the concept of land revenue is restricted to the assessment on the basis of the income from the soil of the land. The very basis of the contention is incorrect. As has been explained in Bomanji Ardeshir Wadia and Ors. v. Secretary of State [1929 PC 34] the basis of assessment of non-agricultural land is the return or the income from the user of such land to the land owner. Where the non-agricultural land is not actually put to any use, assessment can also be made on the basis of the potential income from such land. Section 48 of the Land Revenue Code purports to impose land revenue on the basis of return to the land owner. This is clear from the provisions of the said section which reads as follows:

> 48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land-
>
> (a) for the purpose of agriculture,
>
> (b) for the purpose of building, and
>
> (c) for a purpose other than agriculture or building;

[2] Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired be liable to be altered and fixed at different rate by such authority and subject to such rules as the State Government may prescribe in this behalf.

[3] Where land hold free of assessment or condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

[4] The Collector or a survey officer may, subject to any rules made in this behalf under Section 214, prohibit the use for certain purposed of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

The section itself contemplates different rates of assessment depending upon the different purposes for which the land is used. The returns or the income from the different uses of the land is bound to be varied and, therefore, under the said section it is permissible to levy different rates depending upon the income or the return from the use to which the land is put. This proposition is not disputed by Shri Nariman. However, his attack is directed against the further classification of the user based on the location of the land. According to him, since the assessment is based on the use of the land, the return or income from such use would not vary from location to location and hence the different rates of assessment fixed on the basis of the location of the industrial use is ultra vires Section 48 of the Act. We are afraid that a basic fallacy underlies the premise on which the argument is built. The land revenue is not levied on the income from the use of land. That would amount to a tax on income. The assessment is graded on the basis of the income or the return from the land to the owner thereof. In other words, it is graded on the basis of the rental which the land will fetch to the

land owner. The rental will certainly differ from use to use to which the land is put as well as with the location of the land. The land in city or town like Ahmedabad and available for industrial use is bound to fetch more rental than the land put to the same use in a village. In fact, if irrespective of their locations, the lands are assessed at the same rate for the purposes of the land revenue, such assessment will fall foul of Article 14 of the Constitution. The assessment so made has no relation to the actual rental derived by the land owner. The rentals derived have relation only to the gradations of the land made and the assessment levied on the basis of such gradations into low income and high income yielding lands. We are, therefore, unable to appreciate this argument either.

23. Hence, the appeals fail and are dismissed with costs.