Calcutta Guj. Education Society & Anr vs Calcutta Municipal Corporation & Ors on 25 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 4278, 2003 AIR SCW 4927, 2003 (5) SLT 141, 2003 (6) SCALE 802, 2003 (7) ACE 578, 2003 (10) SCC 533, 2003 SCFBRC 535, (2003) SC CR R 535, (2004) 1 RENTLR 53, (2003) 7 SUPREME 292, (2004) 1 ICC 18, (2003) 6 SCALE 802, (2003) 11 INDLD 208, (2003) 4 CAL HN 151

Bench: M.B. Shah, D.M.Dharmadhikari

CASE NO.:
Appeal (civil) 5203 of 2000

PETITIONER:
Calcutta Guj. Education Society & Anr.

RESPONDENT:
Vs.

Calcutta Municipal Corporation & Ors

DATE OF JUDGMENT: 25/08/2003

BENCH:
M.B. Shah & D.M.Dharmadhikari.

JUDGMENT:

J U D G M E N T With Civil Appeal Nos. 5204/2000, 5960/2000, 1572/2001 & 2212/2001 Dharmadhikari J.

The present appeal along with other connected appeals is on the question of validity and proper interpretation of impugned provisions of Calcutta Municipal Corporation Act 1980 (hereinafter referred to as the 'Act' for short), which are contained in Part IV Chapter XII under the Heading "Powers of Taxation and Fixation of Consolidated Rates. The three Judges' Special Bench of the High Court of Calcutta on a reference made by the Division Bench of the said Court, on the validity and interpretation of the impugned provisions of the Act relating to taxes on property has delivered a common judgment in different Writ Petitions, which has been assailed by tenants, sub-tenants and landlords by separate appeals which are being decided by this common judgment. It is not in dispute that the State Legislature is competent to make a law conferring authority on the local bodies to impose property tax to generate revenue for providing civic amenities like supply of water,

drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety, maintenance of streets and public places and other allied services in the municipal areas where lands or buildings are situated. A brief survey of the history of the legislation is necessary.

The repealed Act i.e. Calcutta Municipal Act of 1951 levied equal tax on owner and occupier of the lands and buildings within the municipal area. It provided for issuance of two separate Bills where the premises are occupied only by one tenant. The occupant's share of tax was collected from the tenant as the occupier's Bill. However, in the case of premises having more than one occupier, the 1951 Act had provided that the taxes under both the Bills i.e. the owner's and the occupier's Bill, would be paid by the owner, but in turn, he was competent to collect half of the total taxes paid i.e. occupier's share proportionately from each occupier. The taxes were charged on the rent payable and the rate was also low. The working of the above provision of the Act of 1951 resulted in development of a system where the occupier's share of tax was included in the rent by the owner and both the shares were paid by the owner to the municipality instead of owner paying the taxes and then pursuing remedies against the tenants for collection of the portion of tax imposed by the Act on the tenant or occupier.

In conformity with the above mentioned provisions of the Municipal Act 1951, the West Bengal Premises Tenancy Act 1956 (shortly referred to as 'Tenancy Act') provides that 50% of the total property tax can be included in the "Fair rent." According to the Corporation, with the ever-increasing population of Calcutta and requirement felt of increasing and improving the civic amenities, it is found necessary to increase property tax particularly on lands and buildings which are being put to use within the municipal area for non-residential and commercial purposes. The earlier system which existed under the Municipal Act of 1951, the revenue collected through property tax was limited by the "Fair rent" fixed under the tenancy law. To augment revenue of the Corporation for increasing and maintaining the civic amenities it was felt necessary that a separate 'Surcharge' should be levied on properties occupied for non-residential or commercial purposes.

The present Act was enacted in 1980 providing for valuation on the basis of market rate of rent and higher rate of tax by introducing a consolidated rate of tax combining the tax on owners and tax on occupiers. The 'surcharge' leviable on the occupiers of properties for non- residential/commercial use was included in the "consolidated rate." The present Act by the impugned provisions provides for collection of the entire tax named as "consolidated rate"

> inclusive of owner's and occupier's share from the owner with the right being given to the owner to make recovery of unpaid 'surcharge' from the occupier or the tenant as 'rent'. For appreciating the nature of various challenges made to specific provisions of the Act, it would be necessary to examine generally the scheme of the Act under Chapter XII on subject of Power of taxation and fixation of "consolidated rates." Under Section 2(60) the word "Occupier" is defined to include an owner living in or otherwise using his building and a tenant or any person for the time being paying or liable to pay to the owner the 'rent' or any portion of the rent. Section 2(62) defines the word 'owner' to include person for the time being receiving the rent of the property on his own account or as agent or trustee. Section 170 is a charging section

> which empowers the Corporation amongst other taxes to levy tax on consolidated rate on lands and buildings. Section 171 and 171(2) provide that such consolidated rate shall be 11% where the annual value of the property does not exceed Rs.600/-. Where the annual value exceeds Rs.600/- but does not exceed Rs.18,000/- the percentage or annual value is worked out on a mathematical formula which is specified thus "by dividing the annual value by 600 and then adding 10 to the quotient. The sum thus worked out being rounded off to the nearest first place of the decimal."

Where the annual value exceeds Rs.18,000/- the consolidated rate would be 40% of the annual value."

Sub-section (4) of Section 171 which is mainly attacked by the appellants provides that "where any land and building or hut or portion thereof is used for commercial or non- residential purpose, the Corporation may levy a surcharge on the consolidated rate on such land or building or hut or portion thereof at such rate not exceeding 50% of the consolidated rate as the Corporation may from time to time determine." It further provides that "where only a portion of the land or building or hut is used for such purposes i.e. other than residence, the amount of the consolidated rate payable in respect of the said portion shall be separately calculated while fixing the consolidated rate."

Section 174 lays down the method of determination of 'annual valuation.' The said section provides that for the purpose of assessment of consolidated rate the annual value of any land or building shall be deemed to be the gross annual rent including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year, less an amount of 10% for the cost of repairs and other expenses necessary to maintain such land or building in a state to command such 'gross rent.' Sub-section 4A of Section 171 lays down an alternative mode of determination of annual valuation for consolidated rate where this gross annual value on the basis of rent, likely to be fetched, is unascertainable. By the alternative mode 'gross annual rent of such land or building shall be deemed to be 7.5% of the value of the building obtained by adding the estimated cost of erecting building at the time of assessment less a reasonable amount to be deducted on account of depreciation to the estimated present market value of the land.' Section 178 enables State Government to frame rules for determining value of any land and building in Calcutta and the rules so framed and regulations thereunder are to constitute the Municipal Assessment Code.

This Court in the case of India Automobiles Ltd. vs. Calcutta Municipal Corporation [2002 (3) SCC 388] dealing with the provisions of the Act, has indicated all relevant factors which have to be taken into account for determination of annual letting value and assessment of tax on properties. In such determination, the relevant circumstances are amongst others actual rent received, hypothetical standard rent, the rent paid by sub-tenant, if any, the prevalent rate of rent of lands and building in the vicinity of the property being assessed. The relevant observations of this Court in the case of India Automobiles Ltd (Supra) reads thus :-

"The argument that the rent actually received by the owner should always be deemed to be reasonable rent in the absence of fraud, collusion and other extraneous considerations is too general and broad proposition of law which cannot be accepted for the purpose of determining the annual value of the property for the purposes of Section 174 of the 1980 Act. In the light of clear and unambiguous provisions of Section 174 of the 1980 Act, it cannot be held that the amount realised by a tenant from a sub-tenant cannot, at all be taken into consideration for the purposes of determining the gross annual rent in the absence of extraneous considerations. There is no substance in the submission of the learned counsel appearing for the appellant that allowing the municiapl corporations to assess the annual rateable value on the basis of the income of a tenant from the property would be grossly unfair and would have the effect of rendering the rate provisions of the Act unreasonable, arbitrary and unconstitutional. The Act itself has taken care by making sufficient provision in Sections 193 and 194 regarding the liability to pay the rent and apportionment of such liability when the premises are assessed, let or sub-let. On proof of creation of sub-tenancy, the owner of the building may also be entitled to seek eviction of their tenants under the relevant provisions of the Rent Acts applicable in the State where the land or property is located. We find some substance in the submission of the learned counsel for the appellant that permitting the municipal authorities to assess the annual value only on the basis of the rent paid by the sub-tenant to the tenant and fixing its liability on the owner may adversely affect the owners of the buildings who have let their premises at a time when rents were meagre and who under the rent control statutes are deprived of getting possession back of the lands and buildings from their tenants. The 1980 Act, therefore, requires application of mind by the municipal authorities to determine the rents on the basis of reasonableness by keeping into account all relevant circumstances including the actual rent received by the owner, hypothetical standard rent, the rent being received by the tenant from his sub-tenant and other relevant consideration, such as prevalent rate of rent of lands and building in the vicinity of the property being assessed. Only because the owner of the building is not getting the same rent which the sub-tenant is paying to his lessor, cannot be made a basis to deprive the corporations from determining the annual valuation and taxing the land or building on that basis. If such a plea is accepted, it would be against the provisions of the statute which has been enacted to provide civic services in the form of water, drainage, sewerage, collection, removal and disposal of solid waste, fire prevention and fire safety maintenance of street and public places etc., in the municipal area where such land or building is situate.

.....We are of the view that the basis for determination of annual rent value has to be the standard rent where the Rent Control Act is applicable and in all other cases reasonable determination of such rent by the municipal authorities keeping in view various factors as indicated herein earlier, including the rent which the tenant is getting from his sub-tenant. In appropriate cases the owner of the property may be in a position to satisfy the authorities that the gross annual rent of the building of which the annual valuation was being determined cannot be more than the actual rent

> received by such owner from his tenant. The municipal authorities shall keep in mind the various pronouncements of this Court, the statutory provisions made in the specified Municipal Acts, keeping in mind the applicability or non-applicability of the Rent Act and the peculiar circumstances of each case, to find out the gross annual rent of the building including service charges, if any, at which such land or building might, at the time of assessment, be reasonably expected to let from year to year in terms of Section 174 of the 1980 Act".

Further, sub-section (6) of section 178 obligates the Municipal Commissioner to supply on payment necessary information to owner, lessee or occupier about the apportionment of the "consolidated rate" of such property among several occupiers of such land or building. Furnishing of such information, however, does not preclude the Corporation from recovering the dues from any of such persons owning or occupying land or building. Section 180 provides for revision of the assessment of valuation for consolidated rate and enables owners and occupiers of the property to submit returns pursuant to public notice for revision of assessment of annual value. Section 182 obligates the owner or occupier to submit returns in the prescribed time. The assessment list or the revised assessment list is open to inspection and a public notice for that purpose shall be issued in accordance with Section 184. Before revising the annual valuation, public notices as also written notices will be given to the owners and occupiers and they will be heard by the Municipal Commissioner. This is the requirement of sub-section (1) to (4) of Section 184. Where the assessments are amended, a fresh notice is required to be issued to owners, lessees and occupiers for consideration of the proposed amendment. Section 186 gives a right of filing objections against valuation or assessment, to the owner as also to any person liable to pay the consolidated rate. Under Section 188, the objector will have an opportunity of hearing on his objection before the competent authority. Section 189 provides for an appeal against the assessment to Assessment Tribunal. The appeal can be preferred by the owner or person liable to pay consolidated rate. The pre-condition of hearing of the appeal is deposit of consolidated rate determined. Section 193 specifies the persons on whom 'primarily' consolidated rate is leviable. The persons specified include the 'lessor,' where the land or building is let; the 'superior lessor,' where the land or building is sub-let and 'owner' or the person in whom the right to let such land or building vests, where the land or building is unlet. The most controversial provision the validity of which is questioned by the appellant is Section 194 providing for apportionment of liability or "consolidated rate" between owner, tenant, sub-tenant or occupier. Sub-section (1) of Section 194 lays down that where annual valuation exceeds the amount calculated on the basis of actual rent the person on whom the "consolidated rate" is 'primarily' leviable shall be entitled to receive from the tenant the difference between the amount of the consolidated rate and amount which would be leviable if the "consolidated rate" were calculated on the basis of the 'rent' payable to him. The object of this provision is that consolidated rate calculated on the basis of rent fetchable from the premises should not be a sole burden on the lessor or the owner. His burden of tax is limited to the consolidated rate to be calculated on the basis of actual rent received by him. The additional burden of "consolidated rate" is shared by the tenant or occupier including 'surcharge' where the property is being used for non-residential/commercial purposes. The same method is to be adopted in accordance with sub-section (2) of Section 194 where the accommodation is sub-let. In that eventuality, the burden of tax on tenant would be proportionate to consolidated rate calculable on the basis of actual rent

received by him and the remaining which is to be calculated on the basis of likely rent would be shared by the sub-tenant.

Section 195 of the Act lays down the mode of recovery of the 'consolidated rate'. Under sub-section (1) of the said section, the primary liability would be of the 'lessor,' 'superior lessor' or 'the owner.' If the 'person primarily liable' to pay the "consolidated rate," fails to pay, it will be recoverable from the occupier by attachment of his rent in proportion to the sum due against him. On such recovery from the occupier, the occupier would be liable to adjustment of his dues to the lessor, superior lessor or the owner. Apart from the above, there are other modes of recovery by a service of Bill and notice of demand and coercive method under Bengal Public Demands Recovery Act, 1913. On failure of the person to pay the tax on demand under section 219, recovery can be made by distress and sale of his movable property. Section 225 empowers the Municipal Commissioner to recover the consolidated rate from the occupier by attachment of his rent. On failure of occupier to pay such rent, the amount will be recovered as arrears for tax.

The other controversial provision, which is forcefully attacked by the appellant, is contained in Section 230 providing for apportionment of "consolidated rate" by the 'person primarily liable to pay' i.e. the lessor, superior lessor or the owner of the land or building. This provision empowers 'the person primarily liable' to recover the consolidated rate to the extent of half from the occupier, if there is only one occupier of the property. If there are more than one occupier, he can recover from each occupier 'half of such sum as bears to the entire amount of rate so paid by the owner-the same proportion as the value of the portion of the land or building in the occupation of such occupier bears to the entire value of such land or building.' It further provides that if there are more than one occupier 'such half of the amount may be apportioned and recovered from each occupier in such proportion as the annual value of the portion occupied by him bears to the total annual value of such land or building.' With regard to the 'surcharge' included in the 'consolidate rate' which is levied on properties used for non- residential/commercial purposes, clause (b) of Section 230 empowers the 'person primarily liable' to recover entire amount of surcharge from the occupier and if there are more than one such occupier, the surcharge is to be apportioned and recovered in such proportion as the annual value of the portion occupied by him bears to the total annual value of such property.

Section 231 is also a provision to which serious exception has been taken by the appellant. It provides that the 'person primarily liable' to pay any consolidated rate is entitled to recover portion of the consolidated rate including surcharge from the occupier of the property and for that purpose 'the person primarily liable' shall have the same rights and remedies as if such sum were 'rent' payable to him by the person from whom he is entitled to recover such sum.

The learned counsel appearing for the appellant in this batch of petitions in their own way and different status of their clients, have mainly challenged the provisions of sections 184, 189, 194, 230, 231 and 234A. It is contended in common that they are unworkable, impractical and hence unconstitutional. It is submitted that although, a major portion of the tax is actually levied on the tenants, sub-tenants and the occupants, there is no proper machinery, method and mode of assessment by involving this class of persons. They are, thus, denied opportunity in the method of valuation and assessment. There are no legal and constitutional safeguards against illegal

determination of consolidated rate before effecting recovery by coercive action of attachment of rent or distress and sale of the property on which tax is imposed.

We have also heard learned counsel appearing for the respondent-Corporation, who has taken us through the various provisions of the Act. He strenuously urged that the alleged ground of unworkability of the provisions is a total misconception of the provisions and their misinterpretation. It is submitted that primary liability to pay tax is on the owner of the property but in cases where the property has been let or sublet, the burden of tax is apportioned between the owner as lessor and the lessee or sub-lessee as the occupants. It is submitted that it is impractical in a metropolitan city like Calcutta where there are several multi-storeyed buildings to grant opportunity of participation in determination of valuation and assessment of 'consolidated rate' to all and at every stage. It is also submitted that the provisions of the Act do provide a reasonable safeguard to the tenants, sub-tenants or occupiers to object to the assessment or revised assessment. They have right to file return, file objections and on deposit of tax determined, prefer appeals. It is submitted that none of the provisions can be said to be unworkable and, in fact, they have satisfactorily worked so far. It is submitted that if there are any grievances against the action of any of the Authorities under the Act, it is open to the aggrieved party to approach the appellate forum or the regular courts in accordance with law. Having thus examined the scheme of the Act as also broadly the grounds urged, we shall now deal with specific provisions of the Act which have been assailed by the counsel appearing for the appellants.

Challenge to Section 194 read with Section 230:

> In assailing the provisions of Section 194 read with 230 of the Act it is argued that although, the owner is liable to the extent only of 50% of the property tax, he is authorised to collect the entire 'surcharge' as well as water tax/other charges from the tenants who are ultimately liable. The liability of landlord is confined only to 50% of the property tax on the basis of the actual rent received while the remaining portion of the 'consolidated rate' inclusive of, surcharge, water tax and other charges are recoverable from the tenants. For determination of the 'consolidated rate' even though the liability of the landlord is limited to 50% of the property tax, all requisite notices for valuation and assessment are given to the landlords who may not bother to seriously contest the case before the competent authority because their liability is limited and rest of the liability is on the tenant. We have examined the provisions contained in sections 194 and 230 of the Act and other relevant provisions. We find that the grievance raised is not borne out from the provisions contained in Chapter XII of the Act which indicate various steps for determination of 'consolidated rates.' We have examined the scheme in detail and we find that at the time of determination of valuation, assessment, revision of assessment and amendment of the assessment, public and written notices are required to be given to all concerned parties including owner, tenant, sub-tenant and occupier' on tax and 'surcharge' proposed to be levied for commercial or non-residential user of the properties. The tenants, sub-tenants and occupiers are entitled to written notices. The provisions contain a detailed procedure under which the tenants, sub-tenants or occupiers pursuant to a public

notice and written notice, are entitled to participate in the process of valuation and assessment of consolidated rate by filing returns and objections. See section 181, 184 and 186 of the Act which read thus :-

"181. Submission of returns and inspection of lands and buildings for purposes of assessment. - (1) The Municipal Commissioner may, with a view of enabling him to determine the annual value of any land or building [in any ward or part thereof] and the person primarily liable for the payment of any consolidated rate on such land or building, [by a public notice,] require the owner or the occupier of such land or building or portion thereof to furnish a return in such form, within such period and in accordance with such procedure as may be prescribed.

(2) The Municipal Commissioner may, [by a public notice,] require the owner or the occupier of any land or building [in any ward or part thereof] used for public cinema shows or theatrical performances or as a place of similar pulic recreation, amusement or entertainment to furnish a return in such form, within such period and in accordance with such procedure as may be prescribed.

(3) Every owner or occupier [of any land or building referred to in the public notice] under sub-

section (1) or sub-section (2) shall be bound to comply with such notice and to furnish a return with a declaration that the statement made therein is correct to the best of his knowledge and belief. (4) [* * * * * * *] (5) [**********] (6) [* * * * * * *] "184. Public notice and inspection of assessment list.-(1) When the annual valuation under sub-section (2) of section 179 or a general revaluation under sub-section (1) of section 180 in any ward of the Corporation or part thereof, as the case may be, has been completed, the Municipal Commissioner shall cause the respective valuation to be entered in an assessment list in such form and containing such particulars with respect to each land or building as may be prescribed.

(2) When the assessment list has been prepared the Municipal Commissioner shall give public notice thereof and of the place where the list or a copy thereof may be inspected, and every person claiming to be the owner, lessee, sub- lessee or occupier of any land or building include in the list and any authorised agent of such person shall be at liberty to inspect the list and to take extracts therefrom free of charge. (3) The Municipal Commissioner shall give public notice of the place, time and date, not less than one month after the preparation of the assessment list as aforesaid when he will proceed to consider the annual valuations of lands and buildings entered in the assessment list, and in all cases in which any land or building is for the first time assessed, or the annual value of any land or building is increased, he shall also give written notice thereof to the owner or to any lessee, sub-lessee or occupier of such land or building and shall also specify in the notice the place, time and date, not less than one month thereafter, when he will proceed to consider such valuation.

(4) When a revision in the annual valuation of any land or building has been made under sub-section (2) of section 180, the Municipal Commissioner shall cause the respective valuation to

be entered in the assessment list and shall give a written notice thereof to the owner or to any lessee, sub-lessee or occupier of such land or building, and shall also specify in the notice the place, time and date, not less than one month thereafter, when he will proceed to consider such valuation".

> "186. Objections against valuation of assessment.- Subject to the provisions of section 181 or section 182, any objection to the annual value of a land or building as entered in the assessment list shall be made by the owner or the person liable to pay the consolidated rate, in writing, to the Municipal Commissioner before the date fixed in the notice under Section 184 [or section 185] and shall state in what respect the annual value is disputed".

[Underlining for emphasis] Learned counsel appearing for the Corporation submits that in the city of Calcutta, there are such large number of multi-storeyed buildings that service of individual notice to each tenant, sub-tenant as also on all the occupants of such buildings and give them opportunity of hearing at every stage would not only be a marathon exercise involving insurmountable practical difficulties and bottlenecks but would make the whole process highly cumbersome, if not, impossible in finalising the assessment within a reasonable time. It would also put the Corporation to such a colossal establishment expenditure which may be more than the actual amount of tax that might be levied and found recoverable.

Such argument cannot be accepted. The underlined portion of the provisions of the Act is required to be followed and it grants effective participation to tenants, sub-tenants and occupants who, pursuant to public notice or written notices, approach the competent authority by raising objections and claim opportunity of hearing in the course of proceedings. We, therefore, find that the provisions of the Act allow full and effective participation to the tenants, sub-tenants or occupants in the process of assessment of consolidated rate. Taking into consideration, however, the practical difficulties particularly concerning multi-storeyed buildings occupied by several tenants, sub-tenants and occupants, a mere non-issuance and/or service of public and written notices to all concerned individuals who are 'persons primarily liable or liable', would not be treated by concerned authorities and courts as invalidating the consolidated rate determined and apportioned on various persons regarding such building/ buildings unless a serious prejudice is found to have been caused to the persons aggrieved.

Somewhat similar provisions in Bombay Provincial Municipal Corporation Act, 1949, were examined and similar challenges made to them, on behalf of tenants and occupants, were rejected by this Court in the case of Assistant General Manager, Central Bank of India vs. Commissioner, Municipal Corporation [1995 (4) SCC 696]. See paragraph 14 of the said judgment which reads as under:

> "We are inclined to hold that in the scheme of the Municipal Corporations Act read with Section 10 of the Bombay Rent Act, the tenant does possess the requisite locus standi to file a complaint pursuant to public notice issued under Rule 15(1) or pursuant to special written notice issued under Rule 15(2) as well as to right to file an appeal an appeal under section 406. This should be more so, if there is an agreement

between the landlord and tenant whereunder the obligation to discharge and pay the property taxes is cast upon the tenant. It is true that this is a private arrangement between the parties and cannot form the basis of a legal right but it is certainly an additional factor conferring the requisite locus standi upon the tenant. Even where the Bombay Rent Act is not applicable to a particular building, the existence and proof of such an agreement would enable the tenant to claim the requisite locus standi. Holding otherwise would be grossly unjust to the tenant. While he is made liable, statutorily or by private treaty, for the enhancement in the property taxes, he is not being allowed to question the same. It is true, as contended by the learned counsel for the Corporation, that no prudent owner of a building will allow the assessment to be enhanced unreasonably just to spite the tenant, it cannot at the same time be said that the tenant has no right to file an appeal against the assessment or enhancement, as the case may be, when he is a person directly affected by such assessment/enhancement. There is yet another circumstance: any person proposing to file an appeal under Section 406 has to deposit the disputed tax as contemplated by Section 406(2)(e) as a condition for entertaining the appeal; since the landlord can pass on the enhanced burden to the tenant according to the Bombay Rent Act and also where there is a stipulation between him and the tenant where under the liability to pay the property taxes is exclusively placed upon the tenant, the landlord would not be minded to take the trouble of filing the appeal since he would be obliged to deposit the disputed tax; he may think - and probably legitimately - why should he deposit the disputed tax and file the appeal when the burden of the said tax is not falling upon him. This is also a relevant circumstance in favour of reading a right (to object and appeal) in the tenant. At the same time, it cannot be predicated that the special notice contemplated by Rule 15(2) has necessarily to be served upon the tenant. No such right can be claimed by the tenant nor such an obligation to cast upon the Corporation. The tenant has to be vigilant. There will be a public notice under Rule 15(1) wherever an enhancement is proposed. Even the special notice under Rule 15(2) may, in the normal course, be served upon him because he is in occupation of the premises but that may or may not happen. (In a given case, the landlord may be residing in a portion of the same building; there may be more than one tenant in the building and so on.) Even if the special notice is not served upon him, he has to file the complaint within the time prescribed by the notices and the Rules".

Challenge to Section 195:

The next ground urged is that if the landlord does not pay the consolidated rate or surcharge the same is made recoverable under Section 195 from the tenants by attaching rents payable by them. It is argued that in the event of any dispute regarding the rent between the landlord and the tenant, the tenant is helpless because the Corporation will collect from the tenant what the landlord declares to be the rent from the tenant.

This ground is also speculative. If there is dispute about rent, the tenant is entitled to raise that dispute before the competent authority in the course of assessment and also get its adjudication through the competent Court. Merely because there is a dispute regarding rent, the Municipal authorities cannot in law be made to wait for finalising assessment till the dispute of rent is decided by some other forum. In the event of a dispute regarding rent, it is open to the tenant to raise suitable objection before the competent authority under the provisions of the Act for its decision in the course of valuation and assessment of 'consolidated rate.' Non-participation by Owner:

It is next urged that if the actual rent realised does not suffer any change, the entire increase of tax based on market valuation is to be borne by the tenant and the owner is not affected at all. These circumstances are such that an owner, since he is not affected by increasing valuation, may choose not to attend the hearing at the time of assessment, as he knows that he is entitled to receive the entire increase in the property tax from the tenant or occupiers and his individual liability based on actual rent remains unchanged. The aforesaid ground also does not seem to be acceptable. It is true that burden of tax based on valuation in the assessment is to be borne by the tenant or occupier but as we have examined the provisions, even though the landlord remains inactive by not contesting the assessment proposed, the tenant or occupier has to be vigilant and has right to object to the same pursuant to the public and written notices. The tenants or occupants who have to shoulder major portion of the tax burden, therefore, have to be vigilant and raise objections pursuant to public and written notices and contest the assessments on valid grounds in their own interest. Right of Appeal illusory:

The next ground urged is that the right of appeal so far as the tenant, sub-tenant or occupant is concerned is illusory. It is contended that the pre-condition of maintaining the appeal is deposit of consolidated rate demanded for the property. The provision of the Act make the tenant liable to pay only a portion of tax leviable on him to the owner. The tenant receives neither Bills nor demand notices. In such circumstances, the right of appeal is available only to the owner/lessor as the 'person primarily liable.' The tenant although has to share the major burden of tax, is denied the right of appeal. Even though, he is occupying only a portion of the building it is unreasonable to demand of him to deposit whole consolidated rate for the entire building for maintaining his appeal.

We have examined the provisions of the Act. We find that the provisions do allow the right of appeal as and when there is a demand of proportionate consolidated rate or surcharge from tenants, sub-tenants or occupants. There is great force in the submission made that where the tenant is occupying only a portion of the building and his liability towards 'consolidated rate' or 'surcharge' is proportionately restricted to the portion of the building in his occupation, for exercising right of appeal, to make it compulsory for him to deposit the entire consolidated rate assessed and levied on

> the whole building, is inequitable. The relevant provision contained in Section 189 (5) and (6) read thus:
>
> "(5) Any owner or person liable to payment of consolidated rate may, if dissatisfied with the determination of objection under section 188 appeal to the Tribunal:
>
> Provided that such appeal shall be presented to the tribunal within forty-five days from the date of service of [a copy of the order] under section 188 and shall be accompanied by a copy of the said order.
>
> (6) No appeal under this section shall be entertained unless the consolidated rate in respect of any land or building for the period ending on the date of presentation of the appeal on the valuation determined under section 188 has been deposited [in the office of the Corporation] and the appeal shall abate unless such consolidated rate is continued to be deposited till the appeal is finally disposed of."

As we had examined the provisions, since the tenants, sub-tenants or occupiers have to share the burden of tax to an appreciable extent, right of appeal cannot be denied to them. If the right of appeal is held to be available to them on payment of the entire tax levied on the whole building even though they occupy only a portion of it, the remedy of appeal would be highly onerous and virtually denied. In the aforesaid circumstances, on examination of provisions of the Act and as reasonably construing Section 189(6) of the Act, we find that the 'right of appeal' as an effective remedy has to be given to a tenant, sub-tenant or occupant who is a 'person liable' with 'person primarily liable' for payment of 'consolidated rate' and it would be available only on payment of the 'consolidated rate' as apportioned as his liability and held payable by him. Any other interpretation, would frustrate the very object of providing right of appeal to 'person liable' with the 'person primarily liable' This is how the provision has to be reasonably interpreted and read down. The rule of "reading down" a provision of law is now well recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of 'reading down', however, it is not open to read words and expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfil its purposes. See the following observations of this Court in the case of BR Enterprises vs. State of UP [1999(9) SCC 700]:-

> "First attempt should be made by the courts to uphold the charged provisions and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of legislation, may be beneficial, penal or fiscal etc. Cumulatively, it is to sub-serve the object of the legislation. Old golden rule is of respecting the wisdom of legislature, that they are aware of the law and

would never have intended for an invalid legislation. This also keeps courts within their track and checks individual zeal of going wayward. Yet in spite of this, if the impugned legislation cannot be saved the courts shall not hesitate to strike it down. Similarly, for upholding any provision, if it could be saved by reading it down, it should be done, unless plain words are so clear to be in defiance of the Constitution. These interpretations spring out because of concern of the courts to salvage a legislation to achieve its objective and not to let it fall merely because of a possible ingenious interpretation. The words are not static but dynamic. This infuses fertility in the field of interpretation. This equally helps to save an Act but also the cause of attack on the Act. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. For doing this, the courts have taken help from the Preamble, Objects, the scheme of the act, its historical background, the purpose for enacting such a provision, the mischief, if any which existed, which is sought to be eliminated. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned provisions clearly shows that it confers arbitrary, uncanalised or unbridled power."

On behalf of the Corporation learned counsel placed heavy reliance on paragraph 16 of the Judgement of this Court in Central Bank of India (supra). It is argued that comparable provisions of Bombay Act were examined and contention was rejected that right of appeal to tenants, sub-tenants or occupiers on pre-deposit of tax for the entire property or premises is inequitable and virtual denial of right of appeal. We have carefully gone through the decision of this court in the case of Central Bank of India (supra) which arose out of Bombay Provincial Municipal Corporation Act 1949 (for short the "Bombay Act"). The provisions relevant on this aspect are contained in Sections 194 to 196 of the Act and read as under:

"194. Apportionment of liability for consolidated rate on land or building when the premises assessed are let or sublet.-(1) If the annual valuation of any land or building exceeds the amount calculated on the basis of the rent of such land or building payable to the person upon whom the consolidated rate on such land or building is leviable under Section 193, such person shall be entitled to receive from his tenant the difference between the amount of the consolidated rate on such land or building and the amount which would be leviable if the consolidated rate on such land or building were calculated on the basis of the rent payable to him.

(2) If the annual valuation of any land or building which is sublet exceeds the amount calculated on the basis of rent of such land or building payable to the tenant by his sub-tenant or to the sub-tenant by the person holding under him, the tenant or the sub-tenant shall be entitled to receive from his sub-tenant or the person holding under him, as the case may be, the difference between any sum recovered under this Act from such tenant or sub-

tenant and the amount of consolidated rate on such land or building which would be leviable if the annual valuation of such land or building were calculated on the basis of rent payable to the tenant by his sub-tenant or the sub-tenant by the person holding under him.

> "195. Recovery of consolidated rate on lands and buildings from occupiers.-(1) On the failure to recover any sum due on account of consolidated rate on any land or building from the person primarily liable therefor under section 193, [the Municipal Commissioner shall, notwithstanding anything contained in the West Bengal Premises Tenancy Act, 1956 or in any other law for the time being in force, recover] from every occupier of such land or building, by attachment of the rent payable by such occupier, a portion of the total sum due which bears, as nearly as may be, the same proportion to that sum as the rent annually payable by such occupier bears to the total amount of rent annually payable in respect of the whole of such land or building.
>
> (2) An occupier, from whom any sum is recovered under sub-section (1), shall be entitled to be reimbursed by the person primarily liable for the payment of such sum, and may, in addition to have recourse to other remedies that may be open to him, deduct the amount so recovered from the amount of any rent becoming due from time to time from him to such person.
>
> "196. Payment of consolidated rate on lands and buildings. - (1) Save as otherwise provided in this Act, the consolidated rate on any land or building under this Chapter shall be paid by the person liable for the payment thereof in quarterly instalments and, for the purposes of this section, each quarter shall be deemed to commence on the first day of April, first day of July, first day of October, and first day of January, of a year. (2) The Municipal Commissioner shall cause to be presented to the person liable for payment of the consolidated rate a comprehensive bill in respect of such rate to be paid in quarterly instalments, showing separately the amount of the consolidated rate due against each quarter and the date on which the consolidated rate for each quarter is due.

Such bill shall be sent by post under certificate of posting or by courier agency to the person liable for payment of the consolidated rate, not later than the 31st day of May."

It is true that various provisions of Bombay Act and the Act under consideration before us applicable to Calcutta, are somewhat similar. However, some of the most out-standing features of Calcutta Act are not to be found in the Bombay Act. In the Act applicable to Calcutta which is for consideration before us, the tenant, sub-tenant or occupier have to be involved by Public notice and individual written notices in the course of valuation and assessment of the "consolidated rate"

> or tax. Pursuant to the aforesaid public and individual notices, they have a right to object to the proposed valuation and assessment. They can also submit returns in response to the above notices. The annual value is determined on the basis of actual

> rent and market rent and is apportioned between the owner and lessor, as the person "primarily liable" and the tenant, sub-tenant or occupier, who are described as "persons liable." The provision of sub-section (6) of Section 178 creates an obligation on the municipal Commissioner to supply information, on payment of fee, to the person "primarily liable"

and to "persons liable" regarding the apportionment of the "consolidated rate" or tax on the properties among the several occupiers. The "consolidated rate" so determined for a property is recoverable only from the "person primarily liable"

> who is given a right of reimbursement from the other "persons liable." The consolidated rate is also made recoverable from the 'persons liable' by attaching their rents payable to the "person primarily liable" and giving corresponding rights to the parties to claim adjustment of the tax paid from the quantum of rent.
>
> The Act applicable to Calcutta also imposes a 'surcharge' as part of "consolidated rate" or tax of which the whole burden is on the tenant, sub-tenant or occupier who is putting the premises to non-residential or commercial use. The burden of this 'surcharge' as part of "consolidated rate" is only on the person putting the premises to non-residential or commercial use. The imposition of this surcharge for properties in use for non-residential and commercial purposes with apportionment of that liability only on persons using the property in the manner aforesaid, is a special feature of the Act applicable to Calcutta and which makes this provision as also other provisions to a great extent different from the provisions of Bombay Act which were considered and the right of appeal in that case was held to be allowable only on full deposit of property tax for the whole property or building which is treated to be one unit for valuation and assessment of tax. We have noticed the distinguishing features and the scheme of the Act applicable to Calcutta before us for interpretation and the Act applicable to Bombay. We have resorted to a reasonable interpretation of the provisions of Act applicable to Calcutta. We have come to the conclusion that as tenant, sub-tenant and occupants are "persons liable" with owner or lessor being the 'persons primarily liable', the former category of 'persons liable' have a right to prefer appeal against proposed valuation and assessment of "consolidated rate" by deposit of that portion of "consolidated rate" or surcharge which is found leviable and payable by them. Such portion of "consolidated rate" and 'surcharge' is separately determined and ascertainable from the order of assessment and the demand bills and notices for recovery, if any, issued to the persons "primarily liable" or "persons liable." The decision of this Court in the case of Central Bank of India (supra) on the provisions of Bombay Act, therefore, in our opinion, is distinguishable. In the case before us, the tenants, sub-tenants and occupiers as "persons liable" have to be recognised as aggrieved parties with independent right of appeal to them on pre-deposit of portion of a "consolidated rate" or surcharge, found leviable and recoverable from each of them. Other Grievances:

Incidentally, a grievance was also raised that the tenants, sub-tenants and occupiers even on a formal demand on payment of fees, are not being supplied the necessary details of tax and its apportionment for filing returns, raising objections and filing appeals. We may only observe that there can be no general direction for redressing such grievances. We have found from the provisions, as construed by us, that they create an obligation on the concerned authorities of the Corporation to provide necessary information on assessment and apportionment of tax between 'persons primarily liable' and 'persons liable.' If there is in a given case refusal on the part of Corporation authorities to discharge their statutory liability in the matter of furnishing requisite information to the persons liable to pay the tax, the aggrieved parties have to take recourse to the remedies provided in law for compelling compliance of the provisions of the Act.

Challenge to Section 231:

The appellants have also challenged the applicability of the provisions contained in Section 231 of the Act . it is contended that Section 231 creates a legal fiction by which "tax' is to be treated as a 'rent'. If the tax is treated as rent with the right given to the landlord to recover it as rent, the provisions of Tenancy Act would get attracted without their being any mention of applicability of Tenancy Act to the provisions of the Act under consideration. It is submitted that a provision which deems 'tax' as 'rent' for the purpose of recovery by the landlord for payment to the Corporation or for his own reimbursement where he has already paid the whole amount of tax, creates a situation whereby although the apportionment and quantum of demand is disputed by the tenant, he has to face proceedings for recovery of tax as 'rent' and face the danger of eviction under the provisions of the Tenancy Act.

It is submitted that the provisions of the Act under consideration do not contain any guidelines to indicate as to what extent the provisions of the Tenancy Act would be attracted to portion of tax leviable on the tenant which is fictionally treated as 'rent'.

We have to examine the provisions of Section 231 of the Act in the light of the scheme of the Act. Section 231 of the Act reads thus:

"Mode of recovery - If any person primarily liable to pay any consolidated rate on any land or building and is entitled to recover any sum from an occupier of such land or building, he shall have, for recovery thereof, the same rights and remedies as if such sum were rent payable to him by the person from whom he is entitled to recover such sum."

We find that the machinery provisions for assessment and recovery of tax basically involve the owner or the lessor who is 'primarily liable' for the tax on property although in the course of assessment and recovery of portion of tax from the tenants, sub-tenants or occupants, their involvement is also directed. It is with the purpose to make procedure of recovery of tax simpler that

the owner or the lessor is proceeded against as the "person primarily liable." The owner or lessor of the property is 'primarily' required to satisfy the demand towards tax with right to recover it from the tenant, sub-tenant or the occupant. If the landlord or the owner is obliged to make payment of whole amount of tax inclusive of his own share and share of the tenant, sub-tenant or the occupant, the owner or lessor has to be conferred with power to recover the portion of tax payable by the tenant, sub-tenant or occupant who is actually enjoying the property and putting it to use for commercial or non-residential purpose. The legislature has taken note of the fact that a large number of properties in Metropolitan city of Calcutta are in occupation of tenants, sub- tenants or occupants on a comparatively small amount of rent or lease money. In such situation to impose entire burden of tax on the owner or lessor, would be inequitable, more so when the tenancy law does not allow increase in rent beyond a particular limit and the right of eviction of the landlord is restricted to the grounds under the Tenancy Act. By the impugned provisions of the Act, therefore, the legislature has thought of apportioning the tax burden between owner or the lessor as one party and the tenant, sub-tenant or occupier as the other parties. The whole amount of tax is recoverable from the lessor and may also be recovered from the tenant or sub- tenant through attachment of the rent. In case where the lessor or landlord has paid the whole tax including the portion of tax payable by the tenant or sub-tenant, the landlord has to be equipped with power to get himself reimbursed by recovery of the portion of tax paid by him on behalf of the tenant. Section 231 of the Act, therefore, creates fiction that the 'tax' apportioned on the tenant would be treated as 'rent' and would be recoverable as such. The word 'rent' has not been defined in the tenancy law and this court has taken note of this legal position in the case of Puspa Sen Gupta vs. Susma Ghose [1990 (2) SCC 651] which arose out of the provisions of Tenancy Act applicable to West Bengal. Rent is a compendious expression which may include lease money with service charges for water, electricity and other taxes leviable on the tenanted premises.

The provisions of the Tenancy Act merely enable the landlord to make a demand of arrears of rent and in default of the payment of the same sue the tenant for recovery of rent or eviction on the ground of non-payment of rent despite demand. The tenant can get protection against eviction on the ground of arrears of rent only if he makes requisite deposit of the arrears in the manner laid down in the provisions of the Tenancy Act. A provision to fictionally treat 'tax' as 'rent' is necessitated because in the absence of such a fiction in Section 231 of the Act, the landlord would be compelled to pay the whole amount of tax which is recoverable from him under the Act and would be left to an expensive and cumbersome remedy of filing a civil suit for recovery of such tax paid on behalf of the tenant, sub-tenant or occupant. Such a fiction is required to be incorporated under Section 231 of the Act because a private party cannot recover tax. If a lessor is obliged to pay a portion of tax leviable on the tenant, the landlord can recover the same not as 'tax' but only as part of 'rent.' The fiction created by the legislation in Section 231 to treat 'tax' as 'rent' has to be taken to its logical conclusion. The Act under consideration and the Tenancy Act both are State Legislations. No question arises of legislative incompetence. There does not appear any inter se conflict between the two Acts. Both have to be read and applied harmoniously to achieve the legislative intent in the two enactments. The contention based on Section 231 of the Act, therefore, also does not commend to us and is rejected.

Disproportionate Tax Liability:

In the course of hearing some calculation charts for illustration were placed before us to demonstrate that tax structure under Section 171 has been made in such a manner that although a tenant may be occupying a small portion of rented premises with normal rent but on valuation in relation to the entire building fetching rent exceeding Rs.18,000/- for the purpose of determination of tax, the resultant liability works out higher on the tenant and much lower on the landlord because latter's liability is restricted to valuation based on actual rent from the premises. It is argued that such a result, based on tax structure with a much higher burden on the tenant compared to the landlord being the 'person primarily liable' for payment of tax, is inequitable and unjust. It is also against the concept of imposition of property tax on owners of properties in the local area.

We have already taken note of the stand of the Corporation that premises i.e. lands and buildings in metropolitan town of Calcutta are mostly occupied on meagre rents from the landlords, yet, in those tenanted premises commercial and non-residential activities are going on a scale which, requires more and more civic amenities to be provided by the Corporation. Since the landlords are getting only small rents and the occupants are actually putting the premises to more beneficial use sometimes generating huge incomes, a just tax structure should put lesser burden of tax on the landlord than on the tenants who are in actual occupation. The grievance, therefore, raised that the tax burden is much higher on the tenants, sub-tenants or occupants than on landlords, according to us, is not legitimate and is no ground to assail the impugned provision.

Discriminatory treatment of rented premises governed by West Bengal [Tenancy] Act and others:

One additional ground raised on behalf of the appellants is that provisions of the Tenancy Act are not attracted to all tenanted properties and only properties of which rent is less than Rs.3,000/- per month are covered by Tenancy Act. On the above legal position the contention advanced is the rented premises for which the Tenancy Act is applicable, property tax can be included in "Fair rent" as defined under the Tenancy Act but to accommodations and premises not covered by Tenancy Act, Property tax is not included in rent and there is no obligation on such landlords occupying tenanted premises on rent which is more than Rs.3,000/- per month, to pay property tax directly or through the landlord in accordance with the Tenancy Act. It is, thus, contended that the provisions of the Act create a discriminatory situation between tenants paying less than Rs.3,000/- per month rent and covered by Tenancy Act and tenants paying more than Rs.3,000/- per month rent and falling out side the provisions of the Tenancy Act. We have examined the scheme of the Act and we find that in apportioning the burden of tax on landlord and tenant a uniform scheme or tax structure has been evolved under the Act on the basis of actual and notional rental value of the premises. The liability of the landlord towards tax is limited to the valuation based on actual rent received and the assessment made of the tax based on

letting value of the premises is the liability of the tenant/sub-tenant or occupier. Merely because Tenancy Act is attracted to accommodations with rent less than Rs.3,000/- per month and not to other accommodations having higher rent, does not create any dis- similar situation in application of the Act to various categories of tenants paying rent more or less than Rs.3,000/-. The portion of tax liable to be paid by the occupant or tenant is not directly recovered by the Corporation from them but is recoverable through the landlord and the landlord has been given right of reimbursement by demanding it from the tenant, sub-tenant or the occupant. For recovering such portion the tax payable by the tenant, sub-tenant or occupant, which has been paid by the landlord, is deemed to be "rent" only for the limited purpose of its recovery. The modes of recovery are by a demand notice under the Tenancy Act and if necessary by filing an eviction suit. Resort to remedy before the regular court is also not prohibited. On this aspect of apportionment of tax and mode of recovery of tax, the Act does not make any discrimination between tenants of premises covered by the Tenancy Act and others not covered by the said Act. Conclusion:

As a result of the discussion aforesaid, we find no vice in any of the provisions of the Act although we have considered it necessary to interpret the provisions harmoniously for better application of the provisions of the Act and the Tenancy Act. The various legal provisions assailed before us have been interpreted by us and our conclusions are as under: (1) In view of specific provisions of the Act and as the provisions of the Act impose burden of tax to an appreciable extent on the tenant, sub-tenant and occupiers and the tax is liable to be recovered from them through the landlord or directly by attachment of rent or other coercive modes, the tenants, sub-tenants and occupants are entitled to an opportunity to participate in the process of valuation and assessment. They are entitled, therefore to written notices apart from public notice for assessment, revision of assessment or amendment of assessment of the 'consolidated rate' or tax. It is also made clear that pursuant to the public notice or written notice, the returns submitted by the tenant, sub-tenant or occupier, with regard to determination of annual value shall be considered by the corporation. The same procedure would be followed in revision of the annual valuation.

(2) It is further made clear that non-issuance of public notice or notices and /or non-service of written notices to the 'persons primarily liable' would not necessarily invalidate the proceedings of assessment or reassessment or amendment of the valuation for consolidated rate unless it is established by the party aggrieved that a serious prejudice was caused to it for want of notice. (3) Under the provisions of the Act since the tenant, sub-tenant or occupier have to share burden of an appreciable portion of "consolidated rate" exclusive or inclusive of 'surcharge' in relation to properties used for non-residential and commercial purposes and as the Act provides for opportunity of participation to them pursuant to a public notice and written notice in assessment and reassessment of tax, they have a right of appeal provided under the Act. It is made clear that tenant, sub-tenant and occupiers held liable for

payment of a portion of tax have a right of appeal on pre-deposit of portion of tax levied and made recoverable from them.

(4) It is also made clear that to enable the tenant, sub-tenant or occupier as 'person liable' to pay 'consolidated rate' they would have a right to obtain necessary information on payment of requisite fee in accordance with Section 178 of the Act and Corporation authorities are legally bound to furnish such requisite information.

In the result of the detailed discussion aforesaid, we maintain the judgment of the High Court with the clarification and observations made above. This is further clarified that the legal position explained by us in this judgment would have application to pending and future proceedings but not to proceedings under the relevant chapter of the Act which have already been concluded.

Consequently, the appeals fail and are dismissed. We leave the parties to bear their own costs.