Bidhannagar (Salt Lake) Welfare Asson vs Central Valuation Board & Ors on 18 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2276, 2007 AIR SCW 3962, 2007 (7) SCALE 546, 2007 (6) SCC 668, (2007) 4 SUPREME 542, (2007) 7 SCALE 546, (2007) 3 CAL HN 95, (2007) 2 CAL LJ 163

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Bench: S.B. Sinha, Markandey Katju

CASE NO.:
Appeal (civil) 5519-5520 of 2007

PETITIONER:
Bidhannagar (Salt Lake) Welfare Asson

RESPONDENT:
Central Valuation Board & Ors

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

1. Validity or otherwise of certain provisions of the West Bengal Central Valuation Board (Amendment) Act, 1994 (for short "the Amendment Act") is in question in these appeals which arise out of a judgment and order dated 24.12.2003 passed by a Division Bench of the High Court of Calcutta dismissing the writ petition filed by the appellant herein and, thus, upholding the impugned provisions thereof.

2. Members of the appellant association are occupiers of lands and buildings situated within the territorial limits of the Bidhannagar Municipality. Annual valuation of lands and buildings for the purpose of assessment of municipal tax indisputably is governed by the provisions of the West Bengal Municipal Act, 1993 (for short "the Municipal Act"). In terms of Section 110 thereof, the annual valuation of lands and buildings is required to be determined by the Central Valuation Board (for short "the Board"). The Board was established under the provisions of the West Bengal Central Valuation Board Act, 1978 (for short "the 1978 Act").

3. Valuation of the holdings used to be governed by Sections 10, 11 and 12 of the 1978 Act. Before we embark upon a detailed analysis of the provisions thereof, we may notice that they provided for

publication of the draft valuation list, publication of the final valuation list and amendment of valuation of the list by the Board respectively.

4. Principles of natural justice were to be complied with in terms of Sub- section (3) of Section 10 insofar as upon publication of the draft valuation list, objections were invited and objections, if filed, were required to be considered by the Board for determination thereof upon giving an opportunity of being heard in that behalf. Section 11 provided for publication of the final valuation list together with the amount of consolidated rate payable after determination of the objections filed under Section 10. The final valuation list, so arrived, could be subject to further review in terms of Sections 14 and 15 of the Act.

5. By reason of the impugned amendment, alterations on three principal fields were made, i.e., the provisions relating to publication of the draft valuation list of lands and buildings and finalization thereof, upon hearing objections thereto were deleted. The West Bengal Central Valuation Board (Valuation of Lands and Building) Rules, 1984 (for short "the 1984 Rules") framed under the 1978 Act were also amended by a notification dated 30.03.1984 wherein provisions pertaining to filing objection petitions against the draft annual valuation and determination thereof were deleted. The effect of the said amendment was that the valuation made by the Board was made final, subject to review as provided for under Sections 14 and 15 of the 1978 Act.

6. Contending that the said Amendment Act is violative of Article 14 of the Constitution of India as it deprived the citizens of being heard which is the essence of the principles of natural justice as also lead to procedural unfairness, a writ petition was filed by the appellant. The said writ petition was allowed by a learned Single Judge of the High Court. In arriving at its conclusion, the learned Judge took notice of the contentions raised by the respondents in their counter-affidavits as also other factors relevant for determination thereof at some details. An intra-court appeal was preferred thereagainst in terms of Clause 15 of the Letters Patent Appeal of the Calcutta High Court and by reason of the impugned judgment dated 24.12.2003, the said appeal has been allowed.

7. The High Court opined:

> (i) The requirements of compliance of principles of natural justice have not completely been taken away.
>
> (ii) No case of substantive unreasonableness has been made out.
>
> (iii) In the matter of collection of debt for the purpose of arriving at a general valuation as also for the purpose of determining the objections by the owners and occupiers of the lands and the buildings, the restrictions put on the power of the Review Committee as also the extent to which such power can be exercised do not lead to procedural unfairness; and
>
> (iv) Validity of constitution of the Review Committee cannot also be faulted with.

8. Mr. Bhaskar P. Gupta, learned senior counsel appearing on behalf of the appellant would submit that the Division Bench of the High Court committed a serious error in construing the provisions of the impugned Amending Act insofar as it failed to take into consideration the following:

> (i) The valuation list prepared by the Board and produced in course of the hearing before the learned Single Judge clearly showed that no reason had been assigned in support thereof, and in any event, the same did not bear any real nexus with the factors to be taken into account in the matter of determination of annual valuation as provided under Section 106 of the Municipal Act.
>
> (ii) It may be true that the Amending Act did not exclude the rules of audi alteram partem completely and sought to provide an opportunity of hearing only at the stage of review. However, the provisions thereof would clearly indicate that there is no procedural or substantive observance of the principles of natural justice in the process of determination of annual valuation.
>
> (iii) Opportunity of hearing at the stage of review of the assessment being a post-decisional one, the same does not compensate for the requirements of a pre-decisional hearing.

9. Mr. R. Mohan, learned Additional Solicitor General appearing on behalf of the State of West Bengal and Mr. Altaf Ahmad, learned senior counsel appearing on behalf of the Central Valuation Board, on the other hand, would submit that the procedural fairness as also the principles of natural justice being capable of being read in the provisions of the Amendment Act, the High Court cannot be said to have committed any error in passing the impugned judgment.

10. Assessment of property tax used to be governed by the Bengal Municipal Act, 1932. However, the State of West Bengal enacted the 1978 Act inter alia for constitution of a Central Valuation Board and Valuation Authorities for the purpose of valuation of lands and buildings in West Bengal. By reason of the said provision, the exclusive jurisdiction of the Municipal Committees to make valuation of the lands and buildings which were exigible to levy of property tax was taken away.

11. A Comparative table showing relevant provisions of the 1978 Act and the impugned Amendment Act is as under:

> The 1978 Act The Amendment Act
>
> 5. Members of the Board: (1) The Board shall consist of a Chairman and two other members to be appointed by the State Govt.

(2) The Chairman shall be a person who is or has been an officer of the State Govt. not below the rank of a Secretary.

(3) Of the two other members

(a) one shall be a person who is or has been a member of the judicial service for not less than 7 years and has experience in municipal affairs;

and

(b) the other shall be a person holding a degree in Civil Engineering and having knowledge and experience in the work of valuation and assessment for not less than seven years.

(4) The Chairman and the other members of the Board shall hold office for such period not exceeding six years as the State Government may determine and the terms and conditions of their service including salaries and allowances shall be such as may be prescribed.

5. Members of the Board (1) The Board shall consist of a Chairman and four other members to be appointed by the State Govt.

(2) The Chairman shall be a person who is or has been an officer of the State Govt. (not below the rank of Secretary including ex-officio Secretary).

(3) The four other members shall include the Director of Local Bodies, Government of West Bengal, who shall be the ex-officio member of the Board, and such other officers of the State Government or non-official experts having knowledge and experience in the field of judiciary, Engineering, Valuation and Assessment of properties, economics or social science as the State Government may determine.

(4) The Chairman and the other members of the Board shall hold office for such period not exceeding four years as the State Government may determine and the terms and conditions of their service, including salaries and allowances shall be such as may be prescribed.

(5) The Board shall have a Member-

Secretary who shall be appointed by the State Government from amongst the members referred to in sub-

section (3) and shall be the Chief Executive Officer of the Board.

5A. Validation Notwithstanding anything contained elsewhere in this Act, no action of the Board shall be invalid or otherwise called in question merely on the ground of the existence of any vacancy (initial or subsequent) in the office of the members of the Board.

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8. Expenditure incurred on account of salaries and allowances The expenditure incurred by the Board for meeting the salaries and allowances of the Chairman, the other members, the Secretary and Officers and employees serving under the Board shall be defrayed out of the Fund.

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8A. The Board shall maintain the prescribed manner a register of registered valuer surveyors (Gr. I) and registered valuer Surveyors (Gr. II).

8B. Every person who possess such qualifications as may be prescribed shall, subject to such terms and conditions and on payment of such fee, as may be prescribed, be entitled to have his name entered in the register of registered valuer surveyors (Gr. I) and registered valuer surveyors (Gr. II).

10. Preparation of the draft valuation list (1) When the valuation under Sec. 9 of the lands and buildings in any area has been completed, the Board shall cause such valuation to be entered in a list.

(2) The Board shall publish the valuation list in such manner as may be prescribed and shall specify a date within which objections to the list may be filed.

(3) After the expiry of the date specified in sub-sec (2) and within the objection shall be determined, after giving the objector an opportunity of being heard by such officer or officers of the Board as it may specify in this behalf.

(4) The objection shall be filed and determined in such manner as may be prescribed.

10. ***

11. Publication of final valuation list When objections have been determined, the Board shall prepare a final valuation list and shall give public notice of the place or places where such list may be inspected and the valuation (together with the amount of consolidated rate thereon) as recorded in the final valuation list shall, subject to the provisions of Sections 14 and 15, be conclusive.

11. Publication of final valuation list When the general valuation of lands and buildings has been made by the Board under Sec. 9, the Board shall prepare a valuation list and shall give public notice of the place or places where the valuation list may be inspected, and the valuation as aforesaid together with the amount of consolidated rate or property tax, as the case may be, payable thereon, as recorded in the valuation list shall, subject to the provisions of Sections 14 & 15 be conclusive. The Board shall give a notice in writing to the owner or to the lessee, sub-lessee or occupier of any land or building, as the case may be, in all case in which the valuation of such land or building is made for the first time or the annual valuation of such land or building as increased:

Provided that the valuation list as aforesaid may be prepared and published in respect of all the holdings of any municipal area or any area within the jurisdiction of a Corporation specified in the notification under sub-sec (1) of Sec 9 or the holdings of any municipal area within such group of wards or any area within such group of wards within the jurisdiction of a Corporation as the State Government may determine.

12. Amendment of Valuation list by Board The Board may, for reasons to be recorded in writing, amend the valuation list at any time before the date specified for filing objections under sub-sec (2) of Section 10.

12. **** 12A. Alteration or amendment of valuation list (1) Notwithstanding anything contained in Sec 11, the Board may at any time before the date of hearing of an application for review under Section 14 and for reasons to be recorded in writing, direct any alteration or amendment of the valuation list : -

(a) by inserting therein the name of any person whose name ought to be inserted; or

(b) by inserting therein any land or building previously omitted together with the valuation thereof; or

(c) by striking out the name of any person or any land or building not liable for payment of consolidated rate or property tax, as the case may be; or

(d) by increasing or decreasing the annual valuation of any holding which, in the opinion, of the Board, has been substantially under-valued or over-valued by reasons of fraud, mis-representation, mistake or error.

14. Application for review (1) The owner or occupier or any other person primarily liable to pay consolidated rate may, if dissatisfied with the valuation of any land or building as entered in the final valuation list, apply to the Board to review the valuation.

(2) The application shall be filed within such time and in such manner as may be prescribed.

(3) Every application presented under sub-sec (1) shall be heard and determined by a Review Committee constituted under Sec 15 in accordance with such procedure as may be prescribed.

(4) No application shall be entertained unless the amount of consolidated rate as recorded in the final valuation list referred to in Sec 11 has been paid or deposited in the office of the Corporation or the Municipality, as the case may be, before the application is filed and the application shall fail unless amount is continued to be paid or deposited till the application is finally disposed of.

14. Application for review (1) The owner or occupier or any other person primarily liable to pay consolidated rate for property tax, as the case may be, may if dissatisfied with the valuation of any land or building as entered in the valuation list, apply to the Corporation or the Board of Councillors concerned to review the valuation.

(2) The application shall be filed within such time and in such manner as may be prescribed.

(3) Every application presented under sub-sec (1) shall be heard and determined by a Review Committee constituted under Sec 15 in accordance with such procedure as may be prescribed.

(4) No application u/sub-sec (1) shall be entertained unless the amount of consolidated rate or property tax, as the case may be, on the previous valuation of land or building as aforesaid has been paid or deposited in the office of the Corporation or Municipality, as the case may be, before the application is filed, and every such application shall fail unless the amount of consolidated rate or property tax as the case may be on the previous valuation as aforesaid is continued to be paid or deposited in the Office of the Corporation or Municipality, as the case may be, till such application is disposed of.

Provided that wherever the previous valuation refers to a valuation made under the Bengal Municipal Act, 1932 (Bengal Act XV of 1932), and in force on the date immediately before the commencement of the West Bengal Municipal Act, 1993 (West Bengal Act XXII of 1993), no application under sub-section (1) shall be entertained unless the amount of consolidated rate on such previous valuation has been paid or deposited or is continued to be paid or deposited in the office of the concerned Municipality.

15. Review Committee (1) The State Government shall constitute such number of Review Committee as may be considered necessary to hear the applications filed under sub-

section (1) of Section 14.

(2) Each such Review Committee shall consist of two members of whom one shall be its President. The President of each Review Committee shall be appointed by the State Govt.

on such terms and conditions and shall possess such qualifications as may be prescribed. The other members of the Review Committee shall be, where the matter relates to

(i) any land or building in any Ward in Calcutta or Howrah or Chandranagore, the Councillor of the Ward; or

(ii) any land or building in any Ward in a municipality, the Commissioner of that Ward; or

(iii) any land or building in any area other than the areas mentioned in clauses (i) and (ii), such person as the State Government may appoint:

Provided that when a Corporation is, or the Commissioners of a Municipality are, superseded, the State Government shall appoint a person residing in the Ward to which the matter relates as the other member referred in clause (i) or clause (ii).

Provided further that no meeting of a Review Committee shall be held if the President is absent:

Provided also that no decision of a Review Committee shall be invalid or otherwise called in question merely by reason of any vacancy in the office of the other member or due to absence of such member from any sitting.

(3) The Review Committee may confirm, reduce, enhance or annul the valuation of land or building or may direct fresh valuation to be made after such further enquiry as the Review Committee may direct. (4) If there is any difference of opinion between the members of the Review Committee, the matter shall be referred to the Board for decision. (5) The decision of the Review Committee or of the Board, as the case may be, shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to the Review Committee or has been decided by the Review Committee or the Board.

15. Review Committee Every Corporation or Municipality shall, by a resolution constitute Review Committee (s) to hear applications presented under sub-sec (1) of Sec

14. (2) Every Review Committee shall be presided over by the Chairman or the Vice-Chairman of the Municipality and shall consist of two other members, being Councillors of the Municipality, as may be nominated by the Board of Councillors, and another member, who shall be an officer of the Board having knowledge in the assessment of municipal valuation, deputed by the Board:

Provided that in the case of a Corporation, the Presiding Officer and two other members of the Review Committee shall be such persons as may be nominated by the Corporation from amongst the Councillors by a resolution:

Provided further that no decision of a Review Committee shall be invalid or called in question merely by reason of any vacancy in the composition of the Committee or absence of any member from a meeting thereof other than the Presiding Officer:

Provided also that the decision of a Review Committee shall be unanimous.

Provided also that when a Corporation or a Municipality is dissolved, the State Govt shall constitute by notification the Review Committee consisting of a President and such number of other members as may be specified in the notification for the purpose of hearing applications for review. (3) The Review Committee may confirm, reduce, enhance or annul the valuation of land or building as may direct fresh valuation to be made after such further enquiry as the Review Committee may direct. (4) If there is

> any difference of opinion amongst the members of the Review Committee, the matter shall be referred to the Board for decision. (5) The decision of the Review Committee or of the Board, as the case may be, shall be final and no suit or proceeding shall lie in any Civil Court in respect of any matter which has been or may be referred to the Review Committee or has been decided by the Review Committee or the Board.

12. The 1978 Act, as noticed hereinbefore, was amended in the year 1994. By reason of the said Amendment Act, a proviso was added to Section 9 which is in the following terms:

> "Provided that the Board may, in accordance with a resolution in this behalf adopted at a meeting of the Board and with the previous approval of the State Government, require (a valuer - Surveyor Grade I or valuer surveyor of Grade II) to make, subject to such conditions as may be prescribed, the general valuation of lands and buildings in the area as aforesaid or in any part thereof under the superintendence, direction and control of the Board on payment of such remuneration as the Board may determine, and every such valuation shall be deemed to have been made by the Board."

13. The effect of the said amendments is inter alia to take away the right of an assessee of a pre-decisional hearing. The provisions of the Amendment Act only provide for a review of the valuation made by the Board as pre-decisional hearing is not required to be given. A review contemplated under the 1978 Act is for all intent and purport in the nature of an appeal. The proviso appended to Section 9 of the 1978 Act is an enabling provision in terms whereof general valuation of lands and buildings in the area as aforesaid or in any part thereof made by a Valuer Surveyor Grade I or Valuer-Surveyor of Grade II, however, shall be under the superintendence, direction and control of the Board. Admittedly, no such exercise had been undertaken.

14. Valuation of lands and buildings is a complex exercise. It requires certain amount of expertise. Valuation is made upon obtaining data prepared from a scientific study. Valuation of a land or building would depend upon several factors. Several methods of valuation may be applied for determination thereof. It is for the expert ordinarily to arrive at a decision as to which mode of valuation having regard to a particular set of factors would entail a correct evaluation. However, in determining the valuation of a land or building, it is not expected of a statutory authority to take recourse to the course of action which may be arbitrary, unscientific or haphazard in nature. Although the proviso appended to Section 9 of the 1978 Act, provided for certain safeguards and as thereby a legal fiction has been created, the same, as noticed hereinbefore, is optional. The Board is not bound to take recourse thereto. Who would be the surveyors eligible for carrying out the survey requires prior approval of the State. The learned Single Judge in his judgment noticed that in stead and place of appointing experts in the field, only casual employees were recruited by the Municipality, who made door to door survey of the properties situated within the area of Bidhannagar Municipality and collected the purported datas of the concerned premises in a field book wherefrom an inspection book was prepared and only on the basis thereof valuation was determined by the Board. Such a course of action was not contemplated by law.

15. Section 9(1) of the 1978 Act provides for survey in specific areas. We may notice that the appellants in their writ petition and in particular Paragraphs 16 to 24 thereof categorically stated in regard to the mode and manner in which the valuation is required to be done and had in fact been conducted. Paragraph 23 thereof is as under:

> "23. The Central Valuation Board had no infrastructure of its own in survey the building to ascertain the reasonable valuation and they depended entirely upon what the Municipality had conveyed to them which in turn was based on surmise and conjecture is the Municipality did not and/ or could not carry out any house to house survey of all the 17070 holdings in Salt Lake."

16. In their counter-affidavits, the respondents inter alia stated:

> "18. The allegations made in paragraph 23 of the said application are categorically denied and disputed and it is stated that it is on the advice of the Central Valuation Board that the Municipal authority engaged casual staff who, undertook door to door survey of the holdings on being exhaustively trained by the competent office are of Central Valuation Board. The basic data thus collected have been transferred to the Inspection Book. Central Valuation Board prepared the valuation list on such data and the Municipality thereafter despatched notices signed by the Member Secretary of Central Valuation Board to owner/ occupier etc."

17. The Board, therefore, delegated its power to the Municipality which was impermissible in law. It had no control over the recruitments made by the Municipality. Probably it even did not have any control over their work. Who had been supervising the job of the said casual employees has not been disclosed.

18. The result of such an unscientific study may produce a disastrous result and in fact from the pattern of increase in demands by the Bidhanagar Municipality it appears that the increase in the valuation ranges from 3954%, i.e., 39.5 times to 137%, i.e., 1.4 times. Such exorbitant increase in the tax on the public is, in our opinion, itself indicative of arbitrariness, and hence, violative of Article 14 of the Constitution. In a democracy, the people are supreme, and all authorities must function for the public welfare. Excessive increase in the tax burden on the public is surely not for the public welfare. Also, in the aforementioned context, in our opinion, the very method applied by the Municipality and the Central Valuation Board must be held to be arbitrary in nature and hence violative of the Constitution. In Maneka Gandhi v. Union of India [AIR 1978 SC 597], it was held that arbitrariness may be violative of Article 14 of the Constitution.

19. No person was appointed who had an expertise in the field. The casual employees appointed were not trained personnel. Their qualifications are not known. On what basis they could determine the valuation of the buildings and lands has also not been disclosed. They, being not government servants, ordinarily would not have the power to enter into the premises of persons so as to infringe the right of privacy which is otherwise granted to an authority under the 1978 Act.

20. In view of the mode and manner in which the general valuation had been prepared without giving an opportunity of hearing and/ or in any event without even asking the residents of the area in general to have their say, the provisions of the 1978 Act are required to be construed.

21. Section 11 of the 1978 makes such general valuation final. Section 10 has been deleted but the finality clause attached to Section 11 has been retained. By reason of the Amendment Act, the finality clause has been converted to a conclusive one, subject of course to the provisions of Sections 14 and 15 of the 1978 Act. The provision has been made for giving notice only to the lessees and sub-lessees who were occupiers of the buildings where valuation is intended to be made for the first time or the valuation is sought to be increased.

22. Section 12 of the 1978 Act which provided for certain safeguards insofar as it empowered the Board to make amendment of the valuation list has been omitted. Section 13 had been omitted in the year 1984. It is in the aforementioned backdrop, that the provision for review contained in Section 14 is required to be taken into consideration. Before, however, we resort thereto, it may be noticed that in terms of an unamended provision of Section 14, a Review Committee was constituted in terms of Section 15 of the 1978 Act.

23. Under the unamended provision of Section 15, the State Government was to constitute a number of review committees which were required to hear applications presented under Sub-section (1) of Section 14. Such review committees consisted of two members, out of whom the President was required to be appointed by the State Government on such terms and conditions and who was to possess such qualifications which were prescribed and the other member was to be one of the Councillors concerned. The said provision has no application in the instant case. Sub- section (3) of Section 15 of the Unamended Act had a plenary power to confirm, reduce, enhance or annul the valuation of land or building. The Review Committee had the jurisdiction to make further enquiry as it thought fit and proper. It was only the decision of the Review Committee which was made final.

24. Under the Amended provisions, however, the power of the State which was an independent authority, has been taken away. Power to constitute Review Committee has been conferred upon every Corporation or Municipality, as the case may be. Every Review Committee was to be presided by the Chairman or the Vice-Chairman of the Municipality and would consist of two Councillors of the Municipality and an officer of the Board having knowledge in the assessment of municipal valuation.

25. From the plenary and unlimited power of such Review Committee, its power has been curtained only to 25% in the year 2002. The rule of majority has been taken away. The decision under the amended provision is required to be unanimous. In case of difference of opinion, the matter is required to be referred back to the Board.

26. The provisions, in our opinion, are per se unreasonable and arbitrary. The Review Committee is not independent of the Municipality or the Board. Whereas under the 1978 Act, a person having the requisite knowledge was to be appointed by the State Government as Chairman of the Review Committee, the affairs of the Review Committee are controlled only by the Municipality concerned

and the Board under the Amendment Act. The Municipality essentially is interested in increase in valuation of lands and buildings as it would fetch more income to its coffers. It is unthinkable that although the power to make annual valuation is not to be preceded by an opportunity of being heard to the person who would be affected thereby, the power of the Review Committee has been curtailed to 25% of the valuation made by the Board. The members are not independent person and each one of them is, in one way or the other, interested in the matter. Even the officer nominated by the Board who is said to be an expert might have something to do with the annual valuation of the area in question. In any event, the effect of the amendment is that annual valuation is to be made by the Board, then the objections are to be heard by a Committee which again consists of members of the Municipality and the Board, and in the event, the decision is not unanimous, the matter again goes back to the Board.

27. This provision is akin to the well-known doctrine of Caesar to Caesar. It per se contravenes the values attached to the principles of natural justice. We must also take notice of the fact that even the jurisdiction of civil court is barred and, thus, the only remedy which would be available to the taxpayer would be to take recourse to judicial review. Its application in the matter of this nature where disputed questions of fact may arise for its determination, would be very limited. It is unfortunate that the Division Bench opined, although there was no provision therefor, that in case of any final decision of the Board, the taxpayer can go back to the Review Committee.

28. The proviso appended to Section 14 of the 1978 Act makes the situation worse inasmuch as before taking recourse to the review provision a pre-deposit is to be made in terms thereof. A statute which provides for civil or evil consequences must conform to the test of reasonableness, fairness and non-arbitrariness.

29. Ordinarily an order entailing civil consequences should be preceded by an opportunity of being heard. [See Rajesh Kumar and Ors. v. D.C.I.T. and Ors., (2007) 2 SCC 181] The impugned Act, however, has taken away such a provision which existed in the earlier one.

30. It may be that the legislature thought that while preparing the general valuation, it may not be possible to give an opportunity of hearing as such and, an opportunity of hearing may be given at a later stage. It is true that an order of assessment under the Act is conclusive subject to Sections 14 and 15 of the Act but keeping in view the limited power conferred upon the Revenue Committee thereunder in terms whereof a part of demand is beyond the pale thereof, it is possible that in a given case the entire exercise of review may end in futility. What, thus, was necessary was to provide for an independent and impartial body constituted for the general redressal of the grievance of the taxpayers.

31. The Committee should not have consisted of the authorities of the Municipality and the officers of the Board alone. Section 15 does not provide for any expertise on the part of the Councillors to determine the objections. As many committees as the Municipality likes may be constituted. Rationality in the decision is, thus, not guaranteed.

32. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664], this Court held:

"44. In short, the general principle as distinguished from an absolute rule of uniform application seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre- decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hear ing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need fo r utmost promptitude. In short, this rule of fair play "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty pub lic relations exercise."

33. This Court in Calcutta Gujarati Education Society and Another v. Calcutta Municipal Corpn. and Others [(2003) 10 SCC 533], held:

"30. 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 the 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.

50. 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 the Tenancy Act is attracted to accommodations with rent less than Rs 3000 per month and not to other accommodations having higher rent, does not create any dissimilar situation in application of the Act to various categories of tenants paying rent more or less than Rs 3000. 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 n otice 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.

51. 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 tenants, sub-tenants 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 assessmen t, 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 the 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 tenants, sub-tenants and occupiers held liable for payment of a portion of tax have a right of appeal on predeposit of a 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."

[See also Paras 32 to 34 and 40]

34. The 1978 Act or even the Amending Act have not provided any guidelines. Guidelines are provided in the Municipality Act. When a statute does not provide for procedural fairness, it may be ultra vires.

35. In Dr. Balbir Singh and Others v. M/s. M.C.D. and Others [(1985) 1 SCC 167], this Court held:

> "It is indeed strange that the assessing authorities should have declined to assess the rateable value of 494 properties in South Delhi on the basis of standard rent determinable on the principles laid down in sub-section (1)(A) (2)(b) or (1)(B)(2)(b) of Section 6, merely on the ground that in the opinion of the assessing authorities "the assessees failed to produce the documentary evidence as regards the aggregate amount of reasonable cost of construction and the market price of land comprised in the premises on the date of commencement of the construction". If the assessees failed to produce the documentary evidence to establish the reasonable cost of construction of the premises or the market price of the land comprised in the premises, the asse ssing authorities could arrive at their own estimate of these two constituent items in the application of the principles set out in sub-section (1)(A) (2)(b) or (1)(B)(2)(b) of Section 6. But on this account, the assessing authorities could not justify resort to sub-section (4) of Section 9. It is only where for any reason it is not possible to determine the standard rent of any premises on the principles set forth in Section 6 that the standard rent may be fixed under sub-section (4) of Section 9 and merely because the owner does not produce satisfactory evidence showing what was the reasonable cost of construction of the premises or the market price of the land at the date of commencement of the construction, it cannot be said that it is not possible to determine the standard rent on the principles set out in sub-section (1)(A) (2)(b) or (1)(b)(2)(b) of Section 6. Take for example a case where the owner produces evidence which is found to be incorrect or which does not appear to be satisfactory; can the assessing authorities in such a case resort to sub-

section (4) of Section 9 stating that it is not possible to determine the standard rent on the principles set out in sub-section (1)(A)(2)(b) or (1)(B)(2)(b) of Section 6. The assessing authorities would obviously have to estimate for themselves, on the basis of such material as may be gathered by them, the reasonable cost of construction and the market price of the land and arrive at their own determination of the standard rent. This is an exercise with which the assessing authorities are quite familiar and it is not something unusual for them or beyond their competence and capability. It may be noted that even while fixing standard rent under sub-section (4) of Section 9, the assessing authorities have to rely on such material as may be available with them and determine the standard rent on the basis of such material by a process estimation."

36. In R.K. Kaura v. Municipal Commr., MCD and Others [(2005) 11 SCC 524], this Court held:

> "6. It is true that the order of the respondent Authorities dated 14-11-1996 records that the appellant had appeared and requested for rectification of ex parte assessment dated 9-11- 1993 and had also produced documents. However, it appears that the basis for arriving at the market price of the land had not in fact been disclosed to the appellant nor was the appellant given any opportunity of meeting the same. Accordingly, we set aside the impugned order dated 14-11-1996 and direct the authorities concerned to redetermine the rateable value for the period from March 1989 to 31-3-1994."

37. When a substantive unreasonableness is to be found in a statute, it may have to be declared unconstitutional.

38. In C.B. Gautam v. Union of India and Others [(1993) 1 SCC 78], emphasising the need to comply with principle of natural justice, it was held:

> " Although Chapter XX-C does not contain any express provision for the affected parties being given an opportunity to be heard before an order for purchase is made under Section 269-UD, not to read the requirement of such an opportunity would be to give too literal and strict an interpretation to the provisions of Chapter XX-C and in the words of Judge Learned Hand of the United States of America "to make a fortress out of the dictionary".

Again, there is no express provision in Chapter XX-C barring the giving of a show-cause notice or reasonable opportunity to show cause nor is there anything in the language of Chapter XX-C which could lead to such an implication. The observance of principles of natural justice is the pragmatic requirement of fair play in action. In our view, therefore, the requirement of an opportunity to show cause being given before an order for purchase by the Central Government is made by an appropriate authority under Section 269-UD must be read into the provisions of Chapter XX- C. There is nothing in the language of Section 269- UD or any other provision in the said Chapter which would negate such an opportunity being given. Moreover, if such a requirement were not read into the provisions of the said Chapter, they would be seriously open to challenge on the ground of violations of the provisions of Article 14 on the ground of non-compliance with principles of natural justice. The provision that when an order for purchase is made under Section 269-UD reasons must be recorded in writing is no substitute for a provision requiring a reasonable opportunity of being heard before such an order is made.

31. The recording of reasons which lead to the passing of the order is basically intended to serve a two-fold purpose:

> (1) that the "party aggrieved" in the proceeding before (sic the appropriate authority) acquires knowledge of the reasons and, in a proceeding before the High Court or the Supreme Court (since there is no right of appeal or revision), it has an opportunity to demonstrate that the reasons which persuaded the authority to pass an order adverse to his interest were erroneous, irrational or irrelevant, and (2) that the obligation to

> record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers.

39. In Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi & Ors. [(2003) 7 SCC 151], this Court held:

> "51. In the result, we allow the appeals and hold as under:
>
> (1) Section 116(3) is declared invalid as it delegates unguided and uncanalised legislative powers to the Commissioner to declare any plant or machinery as part of land or building for the purpose of determination of the rateable value thereof "

[See also Dewan Daulat Rai Kapoor and Others v. New Delhi Municipal Committee and Others [(1980) 1 SCC 685]

40. In a case of this nature, provision for review was in effect and substance a provision for appeal. But, when a provision for appeal has been laid down, the same should, for all intent and purport, must provide for an effective remedy.

41. This Court in Union of India & Anr. etc. vs. Tulsiram Patel etc. [AIR 1985 SC 1416], held:

> "The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

42. The said dicta was affirmed by a Three Judge Bench of this Court in Chief Security Officer & Ors. vs. Singasan Rabi Das [(1991) 1 SCC 729], stating that principle of natural justice cannot be dispensed with on mere ipso dixit. [See also Tarsem Singh vs. State of Punjab & Ors. (Civil Appeal No.1489 of 2004), decided on 25th January, 2006, Prithipal Singh v. State of Punjab & Ors., 2006 (11) SCALE 28 and Indian Airlines Ltd. v. Prabha D. Kanan [2006 (12) SCALE 58]

43. Principles of natural justice are based on two basic pillars:

> (i) Nobody shall be condemned unheard (audi alteram partem)
>
> (ii) Nobody shall be judge of his own cause (nemo debet esse judex in propria sua causa)

44. Duty to assign reasons is, however, a judge made law. It is considered to be a third pillar. [See Reliance Industries Ltd. v. Designated Authority and Others, 2006 AIR SCW 4911]

45. A Review Committee being a quasi judicial body was required to fulfill the requirements of the three conditions. There is furthermore no reason whatsoever as to why the power of Review Committee was curtailed only to the extent of 25%. It is furthermore beyond any logic as to why rule of simple majority in a multi-member committee could not be applied.

46. In the case of AM (Serbia) & Ors v. Secretary of State for the Home Department [2007] EWCA Civ 16, before the impugned amendment came into force, the Immigration and Asylum Adjudication System had taken the form of a right to appeal against a decision of the Secretary of State to an adjudicator, with a further right of appeal with leave to the Immigration Appeal Tribunal. The jurisdiction of the IAT was not limited to points of law. By the Nationality, Immigration and Asylum Act 2002, appeals from an adjudicator to the IAT were restricted to appeals on points of law (section 101(1)) and conventional judicial review of a refusal of leave to appeal to the IAT was replaced by statutory review of the leave decision (section 101(2)). The words "fairly, quickly and efficiently" formed the crux of the debate which were derived from under section 106(1A) of the 2002 Act. The court, while finding fault with the impugned amendment, observed:

> "I have come to the conclusion that Rule 62(7) is fundamentally flawed. The significance of Robinson is in its demonstration of the role of the courts and the Tribunal in ensuring that the United Kingdom does not fall foul of the Refugee Convention, even where an obvious point of Convention law has been missed by the practitioners. It surely applies on the same basis to the ECHR, where the argument is even stronger because, by section 6 of the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with an ECHR right and courts and the Tribunal are "public authorities"

for this purpose: section 6(3)(a). There is then a further logical stage in the argument. If it is incumbent upon the AIT to consider and decide Robinson obvious points which have not been advanced by the appellant notwithstanding Rule 62(7), given the rationale of Robinson there is no rational basis for excluding and deciding points of equal force which the appellant draws to the attention of the Tribunal, even though they were not embraced in the grounds of appeal sanctioned by the IAT. For these reasons, I consider that, when he promulgated Rule 62(7), the Lord Chancellor fell into legal error and the Rule cannot survive the Wednesbury challenge."

47. We, therefore, for the aforementioned reasonshave no other option but to hold that the provisions for review conferred in terms of the statute for all intent and purport are illusory ones and do not satisfy the test of Article 14 of the Constitution of India. No statute which takes away sombody's right and/ or imposes duties, can be upheld where for all intent and purport, there does not exist any provision for effective hearing.

48. It is one of those statutes where a decision is rendered by a body which may have an institutional bias although same is not ordinarily contemplated in the case of an individual member being a part of a body.

49. In Dr. Bonham's case [8 Co Rep 113 at 118], Coke, CJ declared a statute ultra vires where a body empowered to impose a levy was itself to be benefited thereby. The said decision was rendered despite the doctrine of parliamentary sovereignty existing in the United Kingdom.

50. We may notice that even this Court in Mithu v. State of Punjab [(1983) 2 SCC 277] has applied the test of non-arbitrariness while striking down Section 303 of the Indian Penal Code. Although the Court may not go into the question of a hardship which may be occasioned to the taxpayers but where a fair procedure has not been laid down, in our opinion, the validity thereof cannot be upheld. [See Smith v. Kvaerner Cementation Foundations Ltd (Bar Council intervening), (2006) 3 All ER 593]

51. For the reasons aforementioned, the judgment of the Division Bench of the High Court is set aside and that of the learned Single Judge is restored. The impugned Act is declared unconstitutional being violative of Article 14 of the Constitution. These appeals are allowed. No costs.