S. 34 and Table A, Regn. 18- Transfer of shares- Relationship between transferor and transfree – Obligation of transferor.

On the transfer of shares the transferee becomes the sole beneficial owner of those shares sold by the transferor, the legal title to which is vested in him. Thus, the relation of trustee and cestue que trust is thereby established between them. The transferor holds the shares for the benefit of the transferee to the extent necessary to satisfy the demands of S. 94, Trusts Act, 1882. As the transferee holds the whole beneficial interest and transferor has none. The transferor must comply with all reasonable directions that the transferee may give. In this situation if he becomes a trustee of dividends he is also a trustee of the right to vote because the right to vote is a right to property annexed to the shares and as such the beneficiary has a right to control the excersise by the trustee of the right to vote. 45 Bom LR 46,**Rel.on.**

The relationship arises by reason of the circumstance that till the name of the transferee is brought on the register of shareholders in order to bring about a fair dealing between the transferor and the transferee equity clothes the transferor with the status of a constructive trustee and this obliges him to transfer all the benefits of property rights annexed to the sold shares of the cestue que trust. That principle of equity cannot be extended to cases where the transferee has not taken active steps to get his name registered as a member on the register of the meantime certain other privileges or opportunities arise quence of the ownership of the shares already acquired. Mathalone R. V. Bombay Life Assurance Co. Ltd. **AIR 1953 SC 385: 1953 SCJ 548: 1954 SCR117.**

SECTION 38

-S.38 and First Schedule- Devolution of title to share in company- in pursuance of agreement, consequent on merger of the State of Mayurbhanj into Dominion of India, the State of Orissa succeeding to the properties purchased by Maharaja of Mayurbhanj in his capacity of the Ruler- Title to shares so purchased vesting in the State- Board of Directors, held, have no power to refuse rectification of the Company, held, did not empower the Directors to refuse rectification- High Court can order such rectification- under Section 38. Indian Chemical Products Ltd. V.State of Orissa. **AIR 1967 SC 253: (1966) 2 SCJ 393: (1966) SUPP SCR 380: (1966) 2 SCA 471.**

-S.38-Procedure.

Application for rectification of alleged wrongly recorded shares should be accompanied by affidavit of counsel- Party cannot challenge form of order under S.38 to which its counsel consented. AIR 1951 Mad 572, Reversed. Sha Mulchand and Co.LTd. v. Jawahar Mills Ltd., Salem. **AIR 1953 SC 98:1953 SCJ 68: 1953 SCR 351: 1953 SCA 987.**

SECTION 193

-Ss. 193 and 230(3) –Bank in occupation of property as tenant- Property not remaining with liquidators for purpose of liquidation – Priority of rent accruing due since date of winding up.

Where the property of which the bank was in occupation as a tenant has not been challenged the property not having remained with the liquidators for the purpose of liquidation**,** unless the Court passes an order holding that the dept incurred **was** part of the cost and expenses of liquidation, the rent acccuring due since the date of the winding up cannot be claimed in

priority over other ordinary depts. Official liquidators. U. P. Union Bank, Ltd.v. Rameshwarv Nath Agarwal. **AIR 1960 SC 332: 1960 SCJ 334: (1960) 2 SCR 189: (1960) 1 An WR (SC) 93.**

SECTION 169

-Ss.169, 87- U.P. Land Revenue Act (3 of 1901), s.149- Right of shareholder to requisition extraordinary general meeting of company – shares held by shareholder attached under s. 149 of U.P. Act- Effect- Title of shareholder to share not lost- He can requisition extraordinary general meeting.

The attachment of certain shares of a company held by a shareholder for purpose of sale in a proceeding under S. 149 of the U.P. Land Revenue Act does not have the effect of depriving the holder of the shares of his title to the shares, and the shareholder is not deprived of his right to vote at the meeting or to issue the notice under S. 169 of the Act.

An attachment under S. 149 of the land Revenue Act is made according to the law in force for the time being for the attachment and sale of moveable property under the decree of a Civil Court. Section 60 of the Code of Civil Procedure, 1908 states the purposes of sale. Section 64 of the Code of Civil Procedure, 1908 states that where an attachment of a property is made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgement- debtor of any debt, divided or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment. Until the property is actually sold, the judgement- debtor retains tittle in the property attached. Under Rule 76 of 0.21 of the Code of Civil Procedure, 1908, the shares in a Corporation which are attached may be sold through a broker. In the alternative such shares may be sold in public auction under R. 77 thereof. On such sale either under R. 76 or under R. 77,the purchaser acquires tittle. Until such sale is effected, all other rights of the judgement-debtor remain unaffected even if the shares may have been seized by the officers of the Court under R. 43 of O. 21 of the Code of Civil procedure, 1908 for the purpose of effecting the attachment, or through a Receiver or though an order in terms of Rule 46 of O. 21 of the Code of Civil Procedure may have been served on the judgement- debtor or on the company concerned. Balkrishna Gupta v. Swadeshi Polytex Ltd. **AIR 1985 SC 520: 1985 TAX LR 2066: (1985) 2 SCC 167: (1985) 2 SCR 854.**

SECTION .394

-S. 394- Amalgamation of company –Valuation of shares –Approved by more than 95% of shareholders- cannot be interfered with by Court.

Per R. M. Sahai, J. when in case of amalgamation of Company admittedly more than 95% of the shareholders who are the best Judge of their interest and are better conversant with market trend agreed to the valuation determined it could not be interfered by Courts as, certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The Court is least equipped for such oversights. Nor, indeed, is it a function of the Judges in our constitutional scheme. It cannot be said that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action and the fundamental rules of reasonable

management of public business, if breached, will become justiciable, if breached, will become justiciable. Hindustan Lever Employees' Union v. Hindustan lever Ltd. **AIR 1995 SC 470: 1994 AIR SCW 4701: (1994) 4 COM LJ 267: 1995 SUPP (1) SCC 499.**

-S. 394 –Amalgamation of companies –carry forward and set-off accumulated loss and unabsorbed depreciation allowance of amalgamated company- Refusal of Government to give declaration contemplated by S. 72-A of I.-T. Act on conclusion that amalgamated company was viable in view of prospect of financial assistance by amalgamating company – Financial assistance could not be forth-coming in view of provisions of S. 370 of the Companies Act- Interference by High Court held valid- See Income- tax Act (1961), S. 72-A. **AIR 1984 SC 1182 : 1983 TAX LR 1286.**

-S. 394- Words and phrases- "Undertaking"- Meaning of – Banking Companies (Acquisition and Transfer of Undertakings) Act (22 of 1969), S.5- See Words and phrases- Undertaking. **AIR 1970 SC 564.**

LEASE

SECTION 535

-S. 535-Order permitting disclaimer of onerous property – Powers of Court –Power exercised in respect of large area of land leased to Company in liquidation for 99 years with further option of renewal for further 99 years for meagre rent of Rs. 1200/- per annum- Not justified.

Decision of Calcutta High Court, Reversed.

The power under S. 535 is not to be lightly exercised. Due care circumspection have to be bestowed. It must be remembered that an order permitting disclaimer, while irt frees the company in liquidation of the obligation to company with covenants, puts the party in whose favour the convenience are to serious disadvantage. The Court must, therefore, be fully satisfied that there are onerous convenants, covenants which impose a heavy burden upon the company in liquidation, before giving leave to disclaim them.

Where a large area of land was leased to the company in liquidation for 99 years with the option of renewal for a further 99 years for the mergre rent of Rs.1200/- per annum it could not be said to be land burdened with onerous convenants. Therefore, it was held that the High Court was not justified in permitting disclaimer of land and holding in proceedings under S. 535 that the lease of the said land had been validly terminated so that the Official Liquidator became liable to pay mesne profits to the Trust; and that this coupled with arrears of rent, in five figures made the lease onerous. United Bank of India v. The Official Liquidator. **1993 AIR SCW 3586: 1994 (1) SCC 575: 1993 (6) JT 116: (1993) 12 Corporate Law Adviser 207 (SC).**

SECTION 536

-S. 536(2)-Ward 'void' in S. 536 cannot be understood as meaning into void- See Negotiable Instruments Act (1881) S. 138 .**2000 AIR SCW 992: 200 Cri LJ 1781: 2000 CLC712.**

-S.536 (2) – Winding up proceedings- Order staying up of proceedings by appellate Court- Repayment of depts. to creditor by company during interregnum period –No evidence to show that payments were made in bona fide manner- Such payments cannot be validated. Chittoor District Co-operative Marketing Society Ltd. v. M/s. Vegetols Ltd. **1987 (Supp) SCC 167.**

-S. 536, 82- Transfer of shares –Effect of –Right to dividend – Winding up –transfer of assets by liquidators for cash and shares in order in another company –Sanction by Court –Discretion-see Ibid, S. 82. **AIR 1956 SC 655.**

SECTION 537

-S.537-Applications of Banks and Financial Institutions for recovery of depts. due to them- Provisions of Recovery of debts due to banks and Financial Institutions act, 1993 confer exclusive jurisdiction in the Dept Recovery Tribunal and Recovery officer – Jurisdiction of civil Court or company Court is ousted- See Banking Laws – Recovery of Depts. due to bank financial Institutions Act (1993), S.17. **AIR 2000 SC 1535: 2000 AIR SCW 1347: 2000 CLC 913.**

-S.537- For initiation of various Dept recovery proceedings by the Banks and Financial Institutions under RDB Act, 1993 leave of Company Court is not necessary- See Banking Laws- Recovery of Depts. to Banks and Financial Institutions Act (1993), S.19 (19). **AIR 2000 SC 1535: 2000 AIR SCW 1347: 2000 CLC 913.**

-S.537- Recovery of Debts due to banks and Financial Institutions Act overrides the Companies Act – See Banking Laws- Recovery of Debts due to Banks and Financial Institutions Act (1993), S. 34. **AIR 2000 SC 1535: 2000 AIR SCW 1347: 2000 CLC 913.**

-S-537- Winding up proceedings in respect of Bank- Applicability of Ss. 171and 232, Companies Act (1913) – See Banking Laws – Banking Companies Act (19490, S.2. **AIR 1956 SC 614.**

SECTION 538

-Ss.538, 539, 478, 541, 545-Order for public examination under S. 45G- Allegations justifying order for public examination are not accusations within Art. 20(3) of the Constitution – Applications for order under S. 545 on allegations under Ss. 538, 539 and 541 of Companies Act also are not accusations –Article 20(3) of the Constitution is not violated- See Banking Laws- Banking Companies Act (1949), S. 45G. **AIR 1965 SC 654.**

SECTION 543

-Ss. 543, 634 and 635 –Civil P.C. (1908), Ss. 2(11) and 50 – Misfeasance proceedings under S. 543 against Director during pendency of proceedings- Proceedings can be continued against his legal representative – His liability, however, would be limited to value of deceased's estate in his hands, (1975) 79 Cal WN 92, Reversed.

The proceedings initiated against a director of a Company in liquidation under S. 543 of the Companies Act can be continued after his death against his legal representatives and the amount declared to be due in such misfeasance proceedings can be realised from the estate of the deceased in the hands of his legal representatives. The legal representative, of course, would be not liable for any sum beyond the value of the estate of the deceased in his hands.

The liability arising under the misfeasance proceedings is founded on the principal that a person who has caused loss to the company by an act amounting to breach of trust should make good the loss. Section 543 of the Act does not provides for a summary remedy for determining the amount payable by such person on proof of the necessary ingredients. The section authorises the Court to direct such persons chargeable under it to pay a sum of money to the company by way of compensation. This is not a provision intended to punish a man who has been found

guilty of misfeasance but for compensating the company in respect of the loss occasioned by his misfeasance.

At the conclusion of the proceedings under Section 543 a declaration of the liability is made. Such declaration partakes of the character of a decree in a suit. When once such declaration is made it can be enforced under Section 634 of the Act and where the order made by one Court has to be executed by another Court the procedure prescribed by Section 635 of the Act has to be followed. In the course of such execution proceedings the provisions of Section 50 of the Code of Civil Procedure has to be applied when the person who is made liable dies before the order is satisfied and the liability of the legal representatives should be determined accordingly. Any other construction of the provisions of Section 543 of thew Act would make the entire process of determination of the liability of persons under it meaningless. The Official Liquidator v. Parthasarathi Sinha. **AIR 1983 SC 188: (1983) 1 SCC 538: 1983 UJ (SC) 71; 1983 Tax LR 2401.**

SECTION 545

-S. 545(1)(6)-Scope of- Complaint by liquidator- Absence of direction by court or hearting of accused persons- Effect on prosecution –See Companies Act (19130, S. 237 (1). **AIR 1959 SC 51: 1959 Cri LJ 242.**

SECTION 557

-S.557-Winding up of company under just and quitable clause –Consideration of wishes of creditors- See Ibid, S.433(1). **AIR 1971 SC 2600; 1971 TAX LR 1771.**

SECTION 582

-**S.582 (b)-** Part X does not affect operation of partnership Act- Partnership, an unregistered company –Suit for dissolution, accounts and declaration- Maintainability- See Ibid, S. 590. **AIR 1977 SC 2021.**

-S. 582- Company incorporated outside India, carrying on business in India winding up as unregistered company- Foreign creditors can prove their claims –See Companies Act (1913), S. 156. **AIR 1962 SC 500.**

SECTION 583

-S.583 – Company incorporated outside India, carrying on business in India –winding up as unregistered company –Foreign creditors can prove their claims –See Companies Act (1913), S. 156. **AIR 1962 SC 500.**

SECTION 584

-S. 584- Company incorporated outside India, carrying on business in India –Winding as unregistered company- foreign creditors can prove their claims –See Companies Act (1913), S.156**.AIR 1962 SC 500.**

SECTION 585

-S. 585 –Company incorporated outside India carrying on business in India- Winding up as unregistered company- Foreign creditors can prove their claims –See Companies Act (1913), S. 156. **AIR 1962 SC 500.**

SECTION 590

-Ss. 590 and 582 (b) – Part X does not affect operation of partnership Act- Partnership an unregistered company- Suit for dissolution, accounts and declaration –Maintainability.

Section 590 leaves unaffected the operation of any enactment (a) which provides for any partnership, association or company being wound up, or (b) which provides for any partnership, association or company being wound up as a company or as an unregistered company under the Companies Act, 1913 or any Act repealed by that Act. An enachtment means the whole Act or a part of it. It is clear that the provisions for winding up of the affairs of a firm which Chapter VI of the Partnership Act contains besides provisions for the dissolution of partnership are left untouched by S. 590. AIR 1955 Mys 149, **Overruled.**

Thus where the partnership was an unregistered company within Section 582(b) and the suit was filed for dissolution of partnership and accounts and the reliefs prayed for included a declaration that the firm stood dissolved from certain date, it was held that it could not be said that the Court had no jurisdiction to entertain the suit in view of part X of the Act. The relief for declaration could not be claimed in a proceeding under Part X of the Companies Act, which provided for the winding up of unregistered companies. However, it was not necessary to consider whether the Civil Court had jurisdiction to entertain some of the claims made in the suit because Section 590 of the Companies Act made it clear that part X of the Act did not affect the operation of the Partnership Act. Vasantrao v. Shyamrao. **AIR 1977 SC 2021: (1977) 4 SCC 9: 1977 UJ (SC) 499: (1977) 2 SCJ 373.**

SECTION 617

-S. 617-Central Inland Water Transport Corporation Ltd. – Though Govt. Company u/s.617, is "the State " within meaning of art. 12- See Constitution of India of India, Art.12. **AIR 1986 SC 1571: 1986 LAB IC 1312.**

-S. 617-Company incorporated under the act – Is an entity distinct from its share- holders- shares owned by President of India and some officials- Does not make the company an agent of Central Government –See Ibid, S. 34(2). **AIR 1970 SC 82: 1970 LAB IC 212**

-S.617- Company –shares held by Union Government, State Government and private individuals- Union Government being largest shareholder nominating company's director **–Held,** that the company being registered under the Companies Act and governed by the provisions of that Act, it was a separate legal entity and could not be said to be either a Government corporation or an industry run by or under the authority of the Union Government- See Ibid, S. 2(18). **AIR 1969 SC 1306.**

-S.617- The constitutional, legislative, executive and opinion trends indicate that the same principles evolved by the industrial adjudication in regard to private sector undertakings having a distinct corporate existence- See Industrial Disputes Act (1947), S. 1. **AIR 1967 SC 948.**

-Ss.617 and 2(18) –Person appointed auditor of Durgapur Projects Ltd., or Hindustan Steel Ltd., holds office of profit under the Government – Constitution of India, Art. 102 (1) (a)- See Ibid, S.2 (18). **AIR 1964 SC 254.**

-Ss. 617 and 619-Office of profit under the Government –What constitutes –person appointed auditor of Durgapur Projects Ltd., or Hindustan Steel Ltd., holds office of profit under the Government –See Constitution of India, Art. 102 (1) (a). **AIR1964 SC 254.**

SECTION 619

-SS. 619 AND 2 (18)- Person appointed auditor of Durgapur Projects Ltd., or Hindustan Steel Ltd., holds office of profit under the Government –See Constitution of India, Art. 102 (10 (a). **AIR 1964 SC 254.**

SECTION 624-B

-S. 624-B-An appeal against order of criminal court passed in trial of offence under Criminal P.C. and not by Section 624-B of the Act which only empowers the Central Government to present appeals through persons mentioned therein. Assistant Registrar of Companies W. B. v. Standard Paint Works (Pvt.) Ltd. **AIR 1971 SC 1115: 1971 CRI LJ 827: (1971) 2 SCC 85: (1971) 2 SCC 85: (1971) 1 SCWR 389.**

SECTION 630

-S. 630 – Complaint against M.D. of company for failure to hand over possession of rent free flat given to him after he ceased to be M. D. –Discharge of M. D. on ground that dispute was of civil nature –Not illegal- See Criminal P. C. (1974), S. 227. **AIR 1999 SC 217: 1998 AIR SCW 3582: 1999 Cri LJ 268.**

-S. 630- Accused convicted under S. 630 of Companies Act for wrongful withholding of property on basis of findings recorded by criminal Court- Subsequent finding of civil Court in suit for eviction that accused had not come into possession through Company but having independent tenancy rights from principal landlord- Has got precedence over findings of criminal Court in summary trial under S. 630 – Conviction, not proper. V. M. Shah v. State v. State of Maharashtra. **AIR 1996 SC 339 : 1995 AIR SCW 4140 : (1995) 5 SCC 767 : 1995 (6) JT 433 : 1995 (4) Com LJ 467.**

-S.630 – Applicability – Legal heirs of employee are covered under S. 630 –Wrongful withholding of premises allotted to deceased officer /employee by his heirs –petition under S. 630 against them, maintainable.

A petition under S. 630 of the Companies Act is maintainable against the legal heirs of the deceased officer /employee for retrial of the company's property wrongfully withheld by them after the demise of the employee concerned. The capacity, right to possession and the duration of occupation of primises allotted by company to its officer /employer are all features, which are integrally blended with the employment and the capacity and the corresponding rights are extinguished with the cessation of employment and an obligation arises to handover the allotted property back to the company is held back whether by the employee, past employee or any one claiming under them, the retained possession would amount to wrongful withholding of the property of the company, actionable under S. 630 of the Act.

AIR 1987 SC 2245, **Foll.**

It cannot be said that, since the provisions of S. 630 of the Companies Act are penal in nature the same must be strictly constructed and, the parties which have not been expressly included by the legislature in S. 630 (1) of the Act, cannot by any interpretative extension be included in the said provision. Such a plea ignores the situation that by a deeming fiction the legal representatives or heirs of a past employee or officer, in occupation of the property of the company, would continue to enjoy the personality and status of the employee or the officer only. Hence, to exclude them, by giving a restrictive interpretation to the provisions would defeat the very object of the provision, which declares the wrongful withholding of the property of the company to be an offence. It is immaterial whether the wrongful withholding is done by the employee or the officer or the past emplyee or the past officer or the heirs of the deceased employee or the officer or anyone claiming their right of occupancy under such an employee or an officer. It cannot be ignored that the legal heirs or representative in possession of the property had acquired the right of occupancy in the property of the company, by virtue of being family members of the employee or the officer during the employment of the officer or the employee and not on any independent account. They, therefore, derive their color and content from the employee or the officer only and have no independent or personal right to hold on to the property of the company. Once the right of the employee or the officer to retain the possession of the property either on account of termination of services, retirement, resignmenation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with u/S. 630 of the Companies Act for retrieval of the possession of the property.

-S.630 (1) (b)- Wrongfully obtaining or wrongfully withholding company's property – Retired employee of company not vacating quarter – It is continuing offence – Complaint filed more than six months after failure to vacate quarter –Not barred by S. 468 (2) (a), Cr. P.C

Under S. 630 of the Companies Act both wrongfully obtaining and wrongfully withholding any property of a company have been made offence punishable under subsection (1). Under sub-section (2) knowingly misapplication has also been envisaged. The offence continues until the officer or employee delivers up or refunds any such property if orderd by the Court to do so within a time fixed by the Court, and in default to suffer the prescribed imprisonment. The idea of a continuing offence is implied in sub-section (2).

The offence under S.630 of the Companies Act is not such as can be said to have consummated once for all. Wrongful withholding or wrongfully obtaining possession and wrongful application of the company's property, that is, for purposes other than those expressed or directed in the articles of the company authorised by the Companies Act cannot be said to be terminated by a single act or fact but would subsist for the period until the property in the offenders possession is delivered up or refunded. It is an offence committed over a span of time and last act of the offence will control the commencement of the period of limiting and need be alleged. The offence consist of a course of conduct arising from a singleness of thought, purpose of refusal to deliver up or refund which may be deemed a single impulse. Considered from another angle, it consists of a continuous serious of acts, which endures after the period of consummation or refusal to deliver up or refund the property. It is not an instantaneous offence and limitation begins with cession of the criminal act, i.e., with the delivering up or refund of the property. It will be a recurring or continuos offence until the property wrongfully withheld or

knowingly misapplied is delivered up or refunded to the company. For failure to do so sub-section (2) prescribes the punishment. This is sufficient ground for holding that the offence under S. 630 of the Companies Act is not one time but a continuing offence and the period of limitation must be computed accordingly.

Where a retired employee of a company fails to vacate and deliver possession of the company's quarter, it cannot be said that the offence is complete upon his failure to vacate. It is a continuing offence and would not be barred by limitation under Section 468(2) merely because the complaint if filed more than six months after the failure of the employee to vacate quarter upon his retirement. M/s. Gokak Patel Volkart Ltd. v. Dundayya G. Hirematg. **1991 AIR SCW 505: (1991) 1 SCJ 499: (1991) 1 SCR 396.**

COMPANIES (PROFITS) SURTAX ACT (7 OF 1964)

SECTION 2

-S. 2(80, Sch. 2,R. 1- Provision and reserve- Capital of company- Computation of – Fund created for payment of liability, not already arisen –It is "other reserve".

Where the liability has actually arisen or anticipated legitimately by the assessee though the quantum of liability has not been determined, a fund created to meet such present liability cannot be treated as 'reserve'. A fund, however, created for payment of a liability which had not already arisen or fallen due but only a provision with regard to the sum that might become liable to be paid is, other reserve' within the meaning of Rule 1 of Second Schedule and should be taken into account in computing the capital of the company for the purpose of the Companies (profits) Surtax Act, 1964. Commr. Of i.- T., Kanpur v. Saran Engineering Co. Ltd. **AIR 1986 SC 1943 : 1986 Tax LR 1298 : (1986) 3 SCC 662: (1986) 161 ITR 741.**

SECTION 4

-S.4 –Companies Surtax – Assessment –Debenture Redemption reserve –Is provision- Not includible in capital of company for purpose of surtax assessment –See Companies Surtax. **AIR 1997 SC 3487: 1997 AIR 1997 SC 3487: 1997 AIR SCW 3579.**

SECTION 13

-S. 13-Rectification of mistake –Income –tax assessment order which is very basis of surtax assessment is part ofrecord, of surtax assessment proceedings –Recomputation of income-tax liability in view of appellate order- Exersise of power of rectification under S. 13 of Surtax Act (1964) –Not invalid. Waldies Ltd. v. Commissioner of Income-tax. **1996 (89) Taxman 552 (sc).**

SECTION 16

-S.16 (1)-Appeal against assessment order in respect of only some items to AAC –other items formatting part if assessment order neither agitated before AAC nor did he pronounce thereupon – Filling of appeal does not bar jurisdiction of CIT in respect of items not appealed against and not pronounced upon by AAC. Commissioner of Income-tax v, Atlas Copco (India) Ltd. **(1993) 115 Cur Tax Rep 546 (SC).**

SECTION 41

-S.41-Surtax- Chargeable profits- Computation- Banking company –Reserve fund- Transfer of only 20% of profit as shown in profit and loss account before declaration of dividend to reserve fund- Qualifies as deduction – Expcess amount thought transferred to reserve fund under S. 17 will not qualify for exclusion in computation of chargeable profits –See Surtax –Chargeable. **19954 AIR SCW 4248: 1996 Tax LR 103.**

SCHEDULE 1, RULE 1

-Sch. 1, R. 1(xi) (b)- Reserves-, Amounts set apart by bank in balance sheet for bad and doubtful debts- Are "reserves"- Qualifies for appropriate relief under R. 1(xi) (b) First Schedule- See Reserves. **AIR 1996 SC 1525: 1996 AIR SCW 1595: 1996 Tax LR 451.**

-Sch.2, R. 1- Statutory deduction- Computation of capital of company- Provision and reserve- Distinction. 1973 UPTC 707, Partially Reversed.

The distinction between 'provision' and 'reserve' is, while the 'provision ' is a charge of profits which are taken into account in the gross receipt of profit and loss Account, 'reserve' is an appropriation of profit to provide for the asset which is represented. The expression "reserve" in Super profits Tax Act, 1963 and the Companies (profits) Surtax Act, 1964 are in pari materia.

Held on facts that the investment reserve and rehabilitation reserve of the assessee company were reserves. But the forfeited dividend reserve of the assessee company was not reserve.

Held further, that the capital reserve and depreciation reserve of the assessee company also constituted reserve. Commissioner of Income-tax, Kanpur v. Elgin mills Ltd., Kanpur. **AIR 1986 SC 1938: 1986 Tax LR 1293: (1986) 3 SCC 655: (1986) 161 ITR 733.**

SCHEDULE 2, RULE 3

-Sch. 2, R. 3-Surtax- Computation of capital- Increase in paid up share capital –Benefit under Rule 3-Company issued Bonus shares in assessment year in question –It amounts to conversion of reserves into fully paid bonus shares- Such conversion did not add up to capital or reserve base, which was not required for application of R. 3- Assessee Company not entitled to benefit under R.3 of Sch. II Sundaram Clayton Limited v. Commissioner of Income –tax. **1996 (3) Com LJ 204 (SC).**

-Sch.3- Reference –Finding by Tribunal that Nylon- 6 yarn is a petrochemical- Held no question of law arose- Reference challenging finding incompetent –See Income –tax Act (1961), S. 256. **AIR 1981 SC 1524: 1981 Tax LR 112223.**

COMPANY

-Amalgamation-Valuation of shares-Approved by more than 95% of shareholders- cannot be interfered with by Court. **AIR 1995 SC 470: 1994 AIR SCW 4701.**

-Amulgamation of Indian Company with foreign company – Approval of scheme-Overwhelming majority of shareholders, creditors, debenture holders, financial institutions approved scheme and also approves share exchange ratio- No impropriety in valuation of shares-Explanatory statement accompanying proposal of amalgamation not lacking in material particulars- Scheme not against public intrest merely because it envisages allotment of 51% shares to foreign company- Amalgamation causing no prejudice to workers of both companies as there were two sets of service conditions- Approval of scheme not interfered with. **AIR 1995 SC 470: 1994 AIR SCW 4701.**

- Board meeting – Resolution passed- Efficacy when lost. **AIR 2000N SC 2427: 2000 AIR SCW 2558 : 2000 CLC 1571.**
--Failure to transfer shares- who can file complaint. **AIR 2000 SC 1643: 2000 AIR SCW 1833.**
-Flat allotted to employee- wrongful retention by his heirs- Heirs can be proceeded against under S. 630 of Companies Act. **AIR 1995 SC 1592: 1995 AIR SCWW 2497.**

--- Income-tax – Free transferability of shares by holders to other members of public – should be present throughout the previous year –Shares were not freely transferable for large part of previous year though they were so transferable at the end of previous year- Benefit of S. 23-A not available to company. (1975) 100 ITR 485 (Bom), Reversed.

'Course' ordinarily conveys the meaning of a continuos progress from one point to the next in time or space and conveys the idea of a period of time, duration and not a fixed point of time. " In the course of such previous year" would, therefore, refer t the period commencing with the beginning of the previous year and terminating with the end of the previous year. If that be the meaning of the pharase " in the course of such previous year" it would necessarily mean that free transferability of the shares by the holdres to other members of the public should be present throughout the previous year.

The Explanation has reference to the point of time at two palces: the first one has been stated as " at the end of the prevoious year" and the second, which is in issue, is "in the course of such previous years". If the legislative intention was not to distinguish and while stating "in the course of such previous year" it was intended to convey the idea of the last day of the previous year, there would have been no necessity of expressing the position differently. When the situation has been differently expressed the legislature must be taken to have intended to express a different intention.

The company claiming relief under S. 23-A came to satisfy the requirement of the section only for four or five days of the year. Thus for a large part of the previous year the shares were not freely transferable though they were so transferable at the end of the previous year.

Held that the Tribunal and the High Court went wrong in holding that the conditions required by the Explanation were satisfied and the benefit under the section was available to the benefit under the section was available to the assessee. Commissioner of Income tax, New Delhi (now Rajasthan) v. M/s. East West Import and Export (p) Ltd. (now know as Asian Distributors Ltd.), Jaipur. **AIR 1989 SC 836: 19989 Tax LR 343: (1989) 1 SCC 760: (1989) 176 ITR 155.**

-Interpretation of S. 3 (8) of Travancore District Municipalities Act (1116)- Nationalised bank is not a company. **(1993) 78 Comp Cas 288 (SC).**

-Winding up, of –Assessment of income-tax finalised –I. -T. O. need not wait and prove his claim before official liquidator when list of creditors is finalised – Income-tax Department is 'second creditor' – Such interpretation should govern cases arising under S. 17 of Central Sales Tax Act also.

(1967) 63 ITR 810 (Mys), AIR 1970 Cal 349, 1974 Tax LR 55 (Raj), (1976) 102 ITR 153 (Guj), 1978 Tax LR 1158 (Delhi) and 1981 Tax LR 369 (Delhi), Overruled.

Where the company was wound up as per the orders of the High Court and after the commencement of the winding up proceedings the Income- tax Officer finalised the assessment of the company, the Income- tax Officer need not wait and prove his claim before the Official Liquidator when the list of creditors was settled. The effect of S. 178 (3) (b) is that the amount

“set aside “ by the Liquidator is marked off as outside the area of the winding up proceedings and the jurisdiction of the winding up Court. The scope of S. 530 (1) (a) of the Companies Act is different from that the Companies Act is different from that of S. 178 of the Income-tax Act. Under S. 530 (1) (a) all taxes which have “become due and payble” alone are entitled to preferential payment. The amount should have been crystalised into a liability. Under S. 178(2) read with S. 178 (3) of the Income- tax Act, Provision should be made for any tax which is then or is likely thereafter to become payable. Even the amounts which have not been crystalised into a liability, but which are “likely to become due thereafter” should be taken note of. The crucial works occuring in Ss. 178(3) and 178 (4) of the Income-tax Act to the effect that the Official Liquidator “shall set aside” the amount notified by the Income –tax Officer and it is not so done, the Official Liquidator is personally liable to pay the amount of tax which the company would be liable to pay would the company would be liable to pay would show that Income –tax Department is treated as a ‘secured creditor’, Moreover, S. 178 of the Income-tax Act occurs in chapter XV of the Act. The object sought to be achived by the provisions in the said Chapter is “to fasten liability to pay the tax” on the inome received and to catch the income at the earliest point of time and tax the same where it is found, instead of waiting for long.
AIR 1979 Kerala 23 (FB), **Affirmed.**
1968 Ker LT 595 AND 1974 Tax LR 2365 (Andh Pra), **Approved.**

Further, such interpretation of S. 178, Income-tax Act should govern cases arising under S. 17 of the Central Sales Tax Act, 1956 as well. But, a situation may arise where the authorities under both the Acts (Income-tax Act as well as Central Sales Tax Act) send similar orders to the Official Liquidator, in which case the question of precedence may arise. In such cases, the priority shall be with respect to the date of receipt of the orders by the Official Liquidator. Imperial Chit Funds (p) Ltd. v. Income –tax Officer. **AIR 1996 SC 1887: 1996 AIR SCW 2206: 1996 Tax LR 488: 1996 (3) JT 410: 1996 (8) SCC 303: 1996 (3) SCR 640.**
-Winding up of – Sale of property by public auction –sale proceeds would be dealt with by company judge as per priority of claims. **(1988) 1 JT 605 (1).**
-Workman’s charge on property of company –Effect on Financial Corporation’s right to sell. **AIR 2000 SC 2642: 2000 AIR ECW 2804; 2000 CLC 1628.**

COMPASSIONABLE EMPLOYEMENT

-Benefit of provided to sons- Retired Govt. Servant not declared blind but found unfit for light duty –cannot claim benefit provided under category blind. **1999 AIR SCW 4932.**

COMPENSATION

-Acquisition of estate of ex-intermediary –Compensation- No provision or compensation in respect of mineral not exploited- law not expropriatory. **AIR 1987 SC 1390.**
-Acquisition of land- Interest –payable only on sum paid as compensation. **AIR 1992 SC 473: 1992 AIR SCW 38.**
-Acquisition of undertaking company –Capitalisation of net income is sound principle of valuation. **AIR 1979 SC 248.**
-Adequacy – Not justiciable. **AIR 1969 SC 634.**
-Arrest of member of legislative Assembly while en route to seat of Assembly – Resultant deprivation of right to attend impending assembly session- Compensation of Rs. 50,000/- -- Awarded. **AIR 1986 SC 494.**

-Claim arising out of motor accident – Cannot be adjusticated by National Commission constituted under Consumer Protection Act. **AIR 1995 SC 1384: 1995 AIR SCW 2028.**
-Courts duty to award compensation to victims. **AIR 1988 SC 2127.**
-Custodial death – Cases of assault by convicts known as 'Mushi Kedis'. **1998 SCC (Cri) 1525.**
--Damage caused to goods in transit –Suit for recovery of compensation – Filled by State Govt. of Rajasthan owner of goods –Against Union of India – Suit in Rajasthan Court- Maintainable. **AIR 1984 SC 1675.**
-Death due electric shock. **AIR 1999 SC 706: 1998 AIR SCW 3890.**
-Death due to electrocution –Disputed question of facts involved –H.C. cannot award compensation in writ petition. **AIR 1999 SC 3412: 1999 AIR SCW 3383.**
-Death due to public atrocities- State liable to pay compensation. **AIR 1990 SC 513.**
-Death in jail- Suit- Limitation. **AIR 2000 SC 2083: 2000 AIR SCW 1923.**
-Death of military officer while in service- Prima facie omission authorities- Compensation of Rupees Six Lakhs awarded to his wife. **AIR 1994 SC 1491: 1994 AIR SCW 946.**
-Death of 6-year-old child due to falling in uncovered sewerage tank – Supreme Court directed State to pay Rs.50, 000/- as compensation. **AIR 1992 SC 2068: 1992 AIR SCW 2434: 1992 Cri LJ 3438.**
-Deduction -Life Insurance amount received by claimant- Not deduction. **AIR 1998 AIR SC 3191: 1998 AIR SCW 3105.**
-Determination – Figure of income given by deceased to doctor at time of his admission to hospital –Should be given weight. **2000 AIR SCW 2213.**

COMPENSATORY ALLOWANCE

-H. R. A. -It is not pay. **AIR 1994 SC 2541: 1994 AIR SCW 3586.**

COMPETITIVE EXAMINATION

-Instructions by public Service Commission- Breach of – Refusal to subject answer books to evaluation- Action not arbitrary. **AIR 1992 SC 952: 1992 AIR SCW 773.**
-List of selected candidates- Life of. **AIR 1988 SC 162; 1988 Lab IC 344.**
-Objective test – Viva voce – Method reducing subjectivity. **AIR 1989 SC 1899.**

COMPULSORY ACQUISITION

-Delivery of coffee by coffee growers to coffee board under Coffee Act – Is sale and not compulsory acquisition. **AIR 1988 SC 1487.**

COMPULSORY ACQQUISITION OF IMMOVABLE PROPERTES

-CBDT Circular No. 455, dt. 16-9-1986 providing for dropping of proceedings regarding properties below 5 lakhs- Applicability- Circular applies even to acquisition –proceedings pending at appellate stage.
M.F.A. No. 45 of 1982, D/- 8-10-1992 (Kerala), Reversed.

In view of the change in the legislation, by introduction of Ch. XX-C and deletion of Ch. XX-A, the C.B.D.T. THOUGHT FIT TO ISUE Circular No. 455, obviously with an object of achieving the earlier finalisation of the proceedings under Ch. XX-A. The circular is undoubtedly a beneficial measure in order to bring an end to the uncertainty of litigious

proceedings with reference to properties, the value of which does not exceed Rs. 5 lakhs. The language of the Circular does not in any manner indicate that it will apply only to proceedings pending before the Competent Authority. The mere fact that reference is made to the initiation of the proceedings by notice under S. 269 –D does not limit the operation of the Circular to proceedings immediately following such notice and culminating with the order of the Competent Authority. If proceedings are pending before the High Court on further appeal and before the high Court on further appeal, they are also acquisition in appleal, they are also acquisitoon proceedings of the same nature as they are only in continution of the proceedings initiated by the Competent Authority. Therfore Circular No. 455 dated 16-5- 1986 issued by the C.B.D.T. is applicable to all pending proceedings which have not attained finality under S. 269 – I of the Act as defined in the expalnation to the said Section. Marthew M. Thomas v. Commissioner of Income tax. **AIR 1999 SC 999: 1999 AIR SCW 625: 1999 TaX LR 306: 1999 (2) SCC 543: 1999 (1) JT 481: 1999 (1) Scale 485: 1999 (2) Supreme 82.**

COMPULSORY PURCHSE BY CENTRAL GOVERNMENT

--Apportionment of purchase price. **2000 AIR SCW 2271: 2000 Tax LR 715.**

--Is subject to buyer's charge for pre paid amount. **2000 AIR SCW 2271: 2000 Tax LR 715.**

COMPULSORY PURCHSE OF BUILDING BY CENTRAL GOVERNMENT

--Effect on rights of statutory tenant – part of building occupied by bona fide statutory tenant- Agreement of sale by erstwhile owner be sold free from all encumbrances- In such case property would vest in Central Govt. free from any incumbrance – T.N. Rent Act excluding premises owned by Sate Govt. – Case remanded to High Court for consideration of the question whether T.N. (Lease and Rent Control) Act (1960) is applicable to building owned by Central Government. 1994 Tax LR 304 (Kant), **Held not good law in** view of (1993) I SCC 78, Adair Dutt and Co. India Pvt. Ltd. v. Appropriate Authority, Income-tax Department. **1996 AIR SCW 4139: 1997 Tax LR 13: 1996 (6) SCC 622: 1996 (8) JT 579: 1996 (7) Scale 307: 1996 (7) Supreme 392.**

COMPULSORY PURCHASE OF IMMOVABVLE PROPERTY

-Apportionment of purchase price- Absence of consent of express willingness to apportionment by transferor- Does not necessarily amount to " dispute raised" – Thus Central Government must tender purchase price to person or persons entitled thereto.

It cannot be said that it is always the transferor/vendor alone who is entitled to receive the consideration payable under an order of compulsory purchase unless otherwise agreed mutually and expressly between the parties and consent terms filed with the Appropriate Authority. If there be any dispute between the buyer and the seller or a third person as to the amount of purchase money having been paid or as to the apportionment of the amount forming part of the purchase money then the amount must be tendered by the Central Government to the person or persons entitled thereto. If there be any dispute raised as to the apportionment of the amount by more than one person staking claims seeking payment of the amount resulting into a dispute as to the apportionment of the amount of consideration, in that case the Central Government shall deposit so much part of the apparent consideration as is the subject matter of dispute with the appropriate authority as provided by subsection (2) of section 269 –UG. In either case the compliance must be made within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government. Failure to make such tender shall result in the pre-emptory purchase being abrogated and the immovable property shall stand re-vested in the transferor as provided by S. 269 –UH (1). An absence of consent or

express willingness to apportionment of the amount does not necessarily amount to a dispute raised.

In the instant case, Form 37-I was filled jointly by the transferees and the transferor stated purchase money to the extent of Rs. 4,55,000/- having been paid by the transferees and received by the transferor. Nobody had questioned the genuineness of this payment. The transferor never disputed having received the said amount. The factum of payment of Rs. 4,55,000/- finding place in the agreement which was the basis of commencement of the proceedings and formed part of Form 37-1 could not have been treated as a disputed payment. In any case, if the Appropriate Authority entertained anydoubt about the genuineness or otherwise of such payment then the Appropriate Authority should have said so in its order and then left the amount in deposit with the Appropriate Authority. That having not been dine the vesting of the property in the Central Government under the order of compulsory purchase cannot defeat the transferee's lien under Section 55 (6) (b) of the T.P. Act. Asgar S. Patel v. Union of India. **2000 AIR SCW 2271: 2000 Tax LR 715: 2000 (5) SCC 311: 2000 (5) JT 321: 2000 (4) Supreme 353: 2000 (4) Scale 141.**

-Failure to tender purchase amount to earlier transferees by Central Government – Said transferees seeking only enforcement of statutory charge in their favour for amount of purchase money paid by them –Re-vesting of property in transferor **was** not sought –thus question of abrogation of order of compulsory purchase and revesting of property in transferor would not arise. Asgar S. Patel v. Union of India.**2000 AIR SCW 2271: 2000 (5) SCC 311: 2000 (5) JT 321: 2000 (4) Supreme 353: 2000 (4) Scale 141.**

COMPULSORY PURCHASE OF PROPERTY

-Fair market value- Determination – Authority considering all germane and relevant materials and coming to conclusion that there was understatement of consideration in agreement by amount more than 15% of fair market value –Presumption as to evasion of tax by transferor –High Court embarking upon enquiry as appellate authority and substituting its conclusions in place of those of tribunal –Held High Court exceeded jurisdiction.

W.A. No. 1233 OF 1996, D/-6-3-1997 (Kant), Reversed.

The parameters for exercise of supervisory jurisdiction of the High Court under Act. 226 of the Constitution, while examining the decision of an inferior tribunal, has no connection with the question whether an appeal is provided for against the said order of the tribunal under the statue in question. The power being supervisory in nature in exercise of such power a finding /conclusion of an inferior tribunal can be interfered with if the High Court comes to the conclusion that in arriving at the conclusion the tribunal has failed to consideration some relevant materials or has considered some extraneous and irrelevant materials or that the finding is based on no evidence or the finding is such that no reasonable man can come to such a conclusion on the basis of which the finding has been arrived at.

Where for arriving at a conclusion as to what would be the fair market value of the property in question in question agreed to be sold, Appropriate Authority considered all the germane and relevant materials produced before it in course of the proceedings and formed its opinion that there wad under-statement of consideration in the agreement by an amount more than 15% of the fair market value and on the basis of several sale truncations which were all contemporaneously made and which had the same potentially and situated in the same locality,

the Appropriate Authority came to the High Court, exceeded its jurisdiction in interfering with such conclusions of the Appropriate Authority by embarking upon an inquiry as an Appellate Authority and by recording its own conclusion in substitution of the conclusion of the tribunal and, therefore, the said decision of the High Court was vitiated. In such a case, in the absence of any irrebuttable materials adduced on behalf of transferor or transferee as to why in the impugned transaction the property has been agreed to be sold at lower rate the natural presumption arises that it was with a view to attempt to evade tax. It was further directed that the entire amount lying in deposit together with the interest accrued thereon should be paid to the transferee. In such a case, the plea of the transferor that he agreed to sell the land at a lower price as he was in urgent need at a lower price as he was in urgent of money to defray the medical expenses on account of kindly transplantation was rightly rejected inasmuch as the transplantation was done in June, 1994 and the agreement to sale was made in September, 1995 and also that transferor was highly qualified doctor and had held various offices with distinction in a carrier spanning over four decades in India and abrod. Appropiate Authority v. Smt. Sudha Patil**. AIR 1999 SC 181: 1998 AIR SCW 3541: 1998 Tax LR 1984: 1998 (8) SCC 237: 1998 (8) Supreme 366: 1998 (6) Scale 90: 1998 (150) Cur Tax Rep 405.**

--Pre., Arts 13 and 31 (before Constitution (Fourth Amendment) Act) – Term 'void' – Meaning of –Post –constitution law violating Art. 31 (2) point of time at which its constitutionally has to be judge – Doctrine of Eclipse – Applicability –Doctrine does not apply to Post-Constitution legislation –such legislation does not revive on amendment of Constitution –U.P. land Tenures (Regulation of Transfers) Act (XV of 1952), held void. AIR 157 ALL 549, Overruled.

The U.P. Land Tenures (Regulation of Transfers) Act (15 of 1952) is unconstitutional, as it did not comply with Art. 31 (2) of the Constitution as it stood at the time the act was passed. The act does not review on enactment of the Constitution (Fourth Amendment) Act by virtue of the doctrine of eclipse. AIR 1957 All 549, **Over- ruled.** The constitutionality of a post-Constitution legislation such as U.P. Act (15 of 1952), must be judge on the basis of the Constitution as it was on the date the legislation was passed, subject to any retrospective amendment of the Constitution. It cannot be judge on the basis of the Constitution as it stood on the date of the writ petition challenging validity of such legislation.

The doctrine of eclipse would apply to pre-Constitution laws are governed by Art. 13 (1) and would not applies to post – Constitution laws which are governed by Art. 13(2). The words 'to the extent of in Art. 13 do not import any idea of time. They only import the idea that the law may be void either wholly or in part and that only such portions will be void as are inconsistent with part III or have contravened part III and no more.

The pre- Constitution laws which were perfectly valid when they were passed and the existencse of which is recognised in the opening words of Art. 13 (1) revive by the removal of the inconsistency in question. There is a difference between the language and scope of Art. 13 (1) and (2). Articale 13 (1) declares such pre-Constitution laws as are inconsistent with fundamental rights void. Art Article (2) consists of two parts; the first part imposes an inanition on the power of the state to make a law contravening fundamental rights, and the second part which is merely a consequential one, mentions the effect of the breach by providing that the law shall be void to the extent of the contravention.

The meaning of the word 'void' is for all practical purposes the same in both the Cls. (1) and (2). But there is one vital difference between pre-constitution and post –Constitution laws in

this matter. The voidness of the pre-Constitution laws is not from inception. Such voidness supervened when the Constitution came into force and so they existed; and operated for some time and for certain purposes. The voidness of post-Constitution laws on the other hand is from their very inception and they cannot therefore continue to exist for any purpose.

The application of the doctrine arises from the inherent difference between Art. 13(1) and art. 13 (2) arising from the fact that one is dealing with pre-Constitution laws and the other is dealing with post-Constitution laws, with the result that in one case the laws being not still-born the doctrine of eclipse will apply while in the other case the laws being still- born there will be no scope for the application of the doctrine of eclipse. Mahendra Lal Jaini v. State of U.P. **AIR 1963 SC 1019: (1963) 2 SCA 163: (1963) Supp 1 SCR 912.**

-Arts.5, Sch .VII, List I, Entry 17 – Acquisition of territory by State by military action—Accosting State not bound to recognize liability of former State towards its citizens –Rights under import licenses obtained by citizen of former Portuguese territories before their acquisition by military action.

Whether the new sovereign has recognized the rights of the new subjects as against itself and has undertaken the liabilities arising thereunder is a question of fact depending upon the action of the new sovereign after acquisition of the territory concerned.

Held, that rights of petiitoner a citizen of former Portuguese teritories, in respect of; licenses obtained by him during the periods 9th October, 1961 and 4th December, rise by the Government of India by military action on 20th December, 1961 and valid for a period of 180 days, were not recognized by the new sovereign namely the Government of India by military action on 20th December, 1961 and valid for a period of 180 days, were not recognized by the new sovereign namely the Government of India and that the petitioner could not compel the new sovereign to recognise those rights.

Since the Goa, Daman and Diu (Administration) Act (1of 1962) and the Ordinance continued the old laws and merely because old laws were continued it could not be inferred that the new State recognized and assumed all liabilities of the former State. Moreover the provisions of sections 7(1) and 9(1) of the new Sovereign the old laws did not continued during interregnum between 20h December, 1961 when the territories were acquired and 5th March 1962, when the Act came into force, Pema Chibar v. Union of India. **AIR 1966 SC 442 : (1966) 1 SCWR 261 ; (1967) 1SCJ 35 : (1966) 1 SCR 357.**

PART 3

-Part. 3- See Ibid, Pre. **AIR 2000 SC 2695; 2000 AIR SCW 2870: 2000 All LJ 2420.**

-Part 3-Fundamental rights –Interpretation – Concept that Constitution is not Static has to be kept in mind _See Ibid, Pre.**AIR 1999 SC 3471: 1999 AIR SCW 3460: 1999 Lab IC 3128.**

-Part 3-Fundamental rights –Recognition of a right as fundamental right – Not necessary that the right in question is expressly sated as a fundamental right in part III –New rights can be read into and inferred from rights can be read into and inferred from rights stated in part into and inferred from rights sated in part III. UInni Krishnan, J.P. v. State of Andhra Pradesh. **AIR 1993 SC 21178: 1993 AIR SCW 863: (1993) 1 SCC 645: (1993) 1 Serv LR 743: 1993 (1) JT 474.**

-Part 3 (General)- There can be no estoppel against the Constitution –See Evidence Act (18720, S. 115. **AIR 1986 SC 180.**

-Parts.III and IV- Directive principles and Fundamental rights- Directive principles thought not enforceable, Courts have to attempt to reconcile the two.

On a careful consideration of the legal and historical aspects of the directive principle and the fundamental rights, there appears to be complete unanimity of judicial opinion of the various decisions of the Supreme Court on the point that although the directive principles are not enforceable yet the Court should make a real attempt at harmonising and reconciling the directive principales and the fundamental rights and any collision between the two should be avoided as far as possible.

In recent decisions on the subject the view that has crystalised is hat the Courts should attempt to give a harmonious interpretation to the directive principle contained in part IV of the Constitution even though not enforceable. Attempt should, therefore, be made to reconcile the two important provisions rather the two important provisions rather that to arrive at conclusions which bring into collision these two provisions- one contained in Part III and the other in Part IV. The reasons, why the founding fathers of our Constitution did not advisedly make these principles enforceable was perhaps due to the vital consideration of giving the Government sufficient latitude to implement these principles from time to time according to capacity, situations and circumstances that may arise. State of Tamil Nadu v. L. Abu Kavur Bai. **AIR 1984 SC 326: (1984) 1 SCC 515: (1984) 1 SCR 725: (1986) 1 Mad LJ (SC) 8.**

ARTICALE 12

1. Scope and applicability of the article.
2. "The Government."
3. "Local authorities."
4. "Other authorities."
- **(A) General.**
- **(B) Illustrative Cases.**
  - **(a) Banks**
  - **(b) Co.operative Banks.**
  - **(c) Co-operative Societies.**
  - **(d) Educational Institutions.**
  - **(e) Companies**
  - **(f) Societies.**
  - **(g) Insurance Companies.**
  - **(h) Corporations**

5. "Within the territory of India or under the control of the Government of India."
6. Rights of citizens inter se.
7. **State whether bound by statute –** See Art. 14.

-Art.12-See Ibid, Art. 16**. 2000 AIR SCW 3077.**

1. Scope and applicability of the article.

-Art. 12, 226- "State"- St. John Ambulance Association" whether State or instrumentality of State- Decision of High Court that it does not satisfy tests laid down by Supreme Court with in meaning of expression in Art. 12 – Decision, though not erroneous, matter requires more detailed consideration – Matter remitted to High Court. Surjit Singh Gandhi v. Indian Red Cross Society.**1999 AIR SCW 4734: 1998 (8) SCC 450.**

-Arts. 12, 226- " State"- St. John Ambulance Association " whether State or instrumentality of State- Decision of High Court that ir does not satisfy tests laid down by Supreme Court with in

meaning of expression in Art. 12- Decision, though not erroneous, matter requires more detailed consideration- Matter remitted to High Court. Surjit Singh Gandhi v. Indian Red Cross Society. **1999 AIR SCW 4734: 1998 (8) SCC 450.**

-**Arts. 12, 226- 'State'** or an 'authority' –M/s. Modern Food Industries (India) Ltd. is "state"under Art. 12- Amenable to writ jurisdiction. Ram Chandra Sharma v. Modern Food Industries (India) Ltd. **1998 (8) SCC 719.**

-Art.12 –Principle of equal pay for equal work –Is applicable with full rigour to establishment , which is instrumentality of state. **AIR 1991 SC 173: 1991 AIR SCW 194.**

-Art. 12- Grih Kalyan Kendra – Whether State- Question not considererd in detalis – Assumed that it is instrumentality of Sate. Grith Kalyan Kendra Workers' Union v. Union of India. **AIR 1991 SC 1173 1991 AIR SCW 194: (1991) 1 JT 60: (1991) 1 UJ (SC) 468.**

-Art. 12- Oil and Natural Gas Commission –It is State within meaning of Art. 12 –Duty –bound to act reasonably and fairly and in consonance with Directive principles of State policy. **AIR 1990 SC 1851.**

-Art . 12 –Establishment under Central govt.- Word 'under' does not mean owned by Central govt.- Principles laid down in Art. 12 are useful in deciding question. **AIR 1988 SC 1369: Lab IC 254.**

-Arts. 12, 14, 16 and 311 –Term "State" –Employees of Institution –Even if institution is 'State'its employees do not become holders civil posts entitled to be covered under Art. 311- However, benefits of part III would be available. Tekraj v. Union of India. **AIR 1988 SC 469: 1988 Lab IC 961: (1988) 1 SCC 236: (1988) 1 SCJ 178.**

-Art. 12- Expression 'the State' in Art. 12- Interpretation of –Definition of expression 'the State' in Art. 12 being for purposes of part III and Part IV expression is not confined to its ordinary and constitutional sense as extended by inclusive portion of Art. 12 but used in the concept of the State in relation to Fundamental Rights guaranteed by Part III and Directive Principles of State policy contained in Part IV which are declared by Art. 37 to be fundamental to governance of the Company.

Whether an interpretation cluase defines a word to mean a particular thing the definition is explanatory and prima facie restrictive, and whenever an interpretation clouse defines a term to include something, the definition is extensive. Art. 12 uses the word "includes". It thus extends the meaning of the expression "the State" so as to include which it also what otherwise may not have been comprehended by that expression when used in its ordinary lagal sense. Art. 12 defines the expression "the State" while the other Articles of the Constitution, Such as Art . 152 and Art. 308 and Cl. (58) of the General Clauses Act define the term "Sate". The deliberate use of the expression "the State" in Art. 12 as also in Art. 36 would have normally shown that this expression was used to denote the State in ts ordinary and constitutional sense of an independent or sovereign State and the inclusive clause in Art. 12 would have extended this meaning to include within its scope whatever has been expressly set out in Art. 12. The definition of the expression "the State" in Art. 12 is, however, for the purposes o parts III and IV of the Constitution. The contents of these two parts clearly show that the expression "the Sate " in Art.12 as also in Art. 36 is not confined to its ordinary and constitutional sense as extended by the inclusive portion of Art. 12 but is used in the concept of the State in relation to the Fundamental Rights Guaranteed by Part III of the Constitution and the Directive Principles of State policy contained in part IV of the Constitution which principles are declared by Art. 37 to be fundamental to the governance of the country and enjoins upon the State to apply in making

laws. Central Inland Water Treansport Corporation Ltd. Briha Nath Ganguly. **AIR 1986 SC 1571: 1986 Lab IC 1312: (1986) 3 SCC 156: (1986) 2 SCJ 201.**

2. "Local authorities."

-Art. 12-Board constituted under J. and K. Shri Mata Vaishno Devi Shrine Act 16 of 1988 for management, administration and governance of shrine is not Sate controlled corporation whin Art. 12 of constitution –See J. and K. shri Mata Vashno Devi Shrine Act (1988) ,S. 19. **AIR 1997 SC 1711: 1997 AIR SCW 869.**

-Art. 12- Delhi Road Transport Authority – 'State' within meaning of Art. 12- Service Regulations framed by them should be subject to Art. 14- Regn. 9(b) of Delhi Road Transport Authority (Conditions of Appointment and Service 0 Regulations.1952- Violative of Art. 14. **AIR 1991 SC 101: 1991 Lab IC 91.**

-Art. 12 – Exemption of State, local bodies and public authorities which are "State", under Rent Control Legislation – Object is that such bodies would not act as private landlords but would act in public interest –See House and Rents- Bombay Rents, Hotel and Lodging House Rates Control Act (1947), S. 4. **AIR 1989 SC 1642.**

MUNICIPAL ARTS.

-Arts. 13 (1), 19 and 32 –Kairana Municipality –Bye –laws 2 and 4 –Validity of –Order of Municipality prohibiting persons from carrying on trade within Municipal limits- Application Under Art. 32 for enforcement of fundamental right of trade –Municipalities – U.P. Municipalities Act (2 of 1916), Ss. 298 and 318.

The petitioner was carrying on wholesale business in vegetables in the municipal limits of the municipality framed certain bye-laws under S. 298, U.P. Municipalities Act. Bye-law 2 provided that no person shall establish a market for wholesale truncations in vegetable except with the permission of the Board. There was however no bye- law authorising the Board to issue the necessary licence. Further, by-law 4 provided for thew grant of a monopoly to a contractor to deal in wholesale trisections at the place fixed as a market. Acting upon this provision the Board granted a monopoly to one H to carry on the wholesale business at a place the Board became powerless o grant licence to the petitioner to carry on the business within the municipal limits and it actually refused an application of the petitioner in that be half on the ground that there was no bye –law under which the board could grant the licence. The petitioner who was thus completely prohibited from carrying on his business filed an application under Art. 32 of the Constitution for enforcement of his fundamental right to carry on his trade guaranteed by Art. 19(1) of the Constitution:

Held, that the prohibition in bye –law 2, in the absence of any provision for issuing licence, become absolute and further the restrictions placed on the petitioner by bye-law 4 were more than reasonable restrictions as are, contemplated by Art. 19(60 and, therefore, the bye-laws would be void under Art. 13(1) of the Constitution.

Held, further, that though the existence of an adequate legal remedy is to be taken into consideration in the matter of granting prerogative writs, the powers given o the Supreme Court under Art. 32 are much wider and are not confirmed to issuing prerogative writs only. Moreover, the remedy of appeal under S. 318, U.P. Municipalities Act, was not an adequate legal remedy in the circumstances of the case. The petitioner was therefore entitled to the relief

prayed for under Art. 32. Rashid Ahamad v. Municipal Board, Kairana. **AIR 1950 SC 163: 1950 SCJ 124: 1950 SCR 566: 5 DLR (SC) 53.**

-Art. 13- Fundamental right –Duty of Court.

Per bose, J. –The fundamental rights conferred by the Constitution are not absolute. They are limited. In some cases the limitations are imposed by the Constitution itself. In other, parliament has been given the power to impose further restrictions and in doing so to confer authority on the executive to carry its purpose into effect. But in every case it is the rights, which are fundamental, not the limitations and it is the duty of the S.C. and of all Courts in the land to guard and defend these rights jealously. It is the duty and privilege of the S.C. to see that rights which were intended to be fundamental are kept fundamental and to see that neither parliament nor the executive exceed the bonds within which they are confined by the Constitution when given the power to impose a restricted set of fetters on these freedoms; and in the case of the executive to see further that it does not travel beyond the powers conferred by Parliament Ram Singh v. Sate of Delhi. **AIR 1951 SC 270: 1951 ALL LJ 111: 52 Cri LJ 904: 1951 SCJ 374.**

23.Question of reasonableness on statutes.

-Arts. 13 (2), 31 (1), 19 (1) (I) (5) –Law depriving persons of his property –Invalid if it infringes Art. 1(1) (I) –Law depriving persons of his fundamental right may amount to reasonable right may amount to reasonable restriction- See Ibid, Art. 31(1). **AIR 1960 SC 1080.**

24. Presumption of Constitutionality.

-Arts. 13 and 14 – Presumption of constitutionality of enactment.

There is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional guarantee. Moti Das v. S.P. Sahi. **AIR 1959 SC 942: 1959 SCJ 1144: (1959) Supp (2) SCR 563.**

-Arts. 14, 226- Govt. contact- Grant of- Challenge by unsuccessful tenderer- court not to interfere- Unless substantial public interest is involved or grant is mala fide.

When a writ petition is filled in the High Court Challenging the award of a contact by a public authority or the state, the Court must be satisfied that there is some element of public interst invalid in entertaining such a petition. If, for example, the dispute is purely between two tendered, the Court must be satisfied that there is some element of pubic interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenders, the Court must be very careful to see if there is any element of public interst involved in the litigation. A mere difference in the prices offered by the two tenders may or may not bee decisive in deciding whether any public interst is involved in intervening in such a commercial transaction it is important to bear mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost of far more that any saying which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court id satisfied that there is a substantial amount of public interest or the truncations is entered into under Art. 226 in disputes between two rival tenderers. Raunaq International ltd. v. I.V. R. Construction ltd. **AIR 1999 SC 393: 1999 AIR SCW 53: 1999 (1) SCC 492: 1998 (8) JT 411: 1998 (6) Scale 456.**

-Art .14- Kerala Building Tax Act (7 of 1957), Pre. – Method of determining capital value of a building on the basis of its annual value is not hypothetical and arbitrary- Act cannot be struck down as unconstitutional.

In the Kerala Buildings Tax Act, the method for determining the capital value of a building on the basis of its annual value is not hypothetical and arbitrary. The Act as such cannot be struck down as unconstitutional. The tax on buildings, under the provision of the Act, has been imposed by virtue of Entry 49 of list II of the seventh Schedule of the Constitution. So when the State Legislature had taken a decision to imposed that tax, it was open to it to decide how best to levy it.

The Legislature cannot be blamed if it decides, to link the levy with the annual value of a building and prescribes a uniform formula for determining its capital value and calculating the tax. D.G. Gouse and Co. (Against) Pvt. Ltd. v. State of Kerala, **AIR 1980 SC 271 (1980) 2 SCC 410: (1980) 2 SCWR 3: (1980) 1 SCR 804.**

-Art .14- Equality –Taxation laws – Immunity from equality clause in Art. 14.

So long as the classification made by a taxing statute does not transgress the fun-
Damental principles underlying the doctrine of equality, it is not vulnerable on the ground of discrimination merely because it taxes or exempts from tax some incomes or objects and not others. Nor the mere fact that a tax falls more heavily on some in the same category, is by itself a ground to render the law invalid. It is only when within the range of its selection the law operates unequally and cannot be justified on the would be a violation of Art. 14. Classification for purposes of taxation or for exemption for purposes of taxation or for exemption for purposes of taxation to the source of the income is intergal to the fundamental scheme of the Income- tax Act. Income-tax Officer, Shillong v. N.Takin Roy Rymbai. **AIR 1976 SC 670: 1976 Tax LR 401: (1976) 1 SCC 916: 103 ITR 82.**

-Art .14- Madras Urban Land Tax Act (13of 1966), S.6 does not violate Art. 14. Assistant Commr. Of Urban Land Tax, Madras v. Buckinham and Carnatic Co. Ltd. **AIR 1970 SC 169: (1969) 2 SCC 55: 75 ITR 603: (1970) 1 SCWR 337.**

-Art.14 – Legislative discretion in matter of classification –Taxing statute – It cannot be struck down as Violative of Art. 14 merely because other objects could have been but are not, taxed by legislature. V. Venugopala Ravi v. Union of India. **AIR 1969 SC 1094: (1969) 1 SCC 681 (1969) 74 ITR 49: (1969) 1 SCWR 739.**

-Art .14- Gujrat Education Cess Act (XXXV of 1962), Ss.3, 12 – Lands and buildings in middle zone of Ahmedabad –Liability to pay both surcharge and tax- Validity- Not invalid on ground of discrimination.

A double imposition by itself is not offensive to Art. 14 of the Constitution unless it can be shown that the double tax in one zone as compared with the single tax in he other zone falls more heavily than the single tax. The contention, therefore, that the lands and buildings in the middle zone of Ahamadabad city have to bear both the surcharge and the tax under the Cess Act and thus there is discrimination between the property in that zone and those in inner zone which is exempt from the tax, cannot be accepted unless it is shown that the rate of cess in the middle zone exceeds the rates in the other zones. Ahmedabad Manufacturing and Calico Printing Co., Ltd. Ahmedabad v. State of Gujrat. **AIR 1967 SC 1916: (1968) 1 SCWR 775: (1967) 3 SCR 595: 9 Guj LR 461.**

-Art. 14 –Applicability to fiscal statues.

A fiscal statute just like any other statute cannot infringe Art. 14 of Constitution by introducing unreasonable discrimination between persons or property either by classification or lack of classification. The state of Andhra Pradesh v. Nalla Raja Reddy. **AIR 1967 SC 1458: (1967) 2 SCWR 260: (1967) 2 SCJ 857: (1967) 3 SCR 28.**

-Art. 14- Imposition of tax on land used as market challenged as discriminatory- Nature of proof required- vague allegations –No material to show discrimination- Attack on ground of discrimination must fail.

Where the appellant challenges on the ground of discrimination, the imposition under S. 62, Assam Local Self- Government Act, of tax on land used as market he was to produced facts and figures from which it to produced fats and figures from which it can be inferred that the tax from which it can is hit by Art. 14 of the Constitution. Where all that that the appellant has stated in his write petition is that the Local Board fixed a high rate arbitrarily and thus discriminated against the appellant's market as against the other neighboring markets where the tax had been fixed at a much lower rate, and that this was hit by Art. 14 the allegation by the appellant that Art. 14 had been infringed is vague and gives no facts and figures for holding that the tax facts and figures for holding that the tax imposed on the appellant's market was discriminatory. Ajay Kumar Mukharjee v. Local Boarx of Barpeta. **AIR 1965 SC 1561: (1966) 2 SCJ 153: (1965) 3 SCR 47.**

- Art. 14- Legislative power of legislature- Taxing statute- Limitation and restriction imposed on legislature to enact –Limitation prescribed by Arts. 144 and 10 and reasonableness prescribed by Art. 304 (b) can be considered by Court –See Ibid, Art. 246. **AIR 1963 SC 1667.**

- Art. 14- Taxation laws –imposition of higher tax on certain cinema houses –Reasonableness.

"Obiter" it may not be unreasonable or improper if a higher tax is imposed on the shows given by a cinema house which contains large seating accommodation and is situate in fashionable or busy localities where the number of visitors is more numerous and in more affluent circumstances that the tax that may be imposed on shows given in a smaller cinema house containing less accommodation and situate in some locality where the visitors are less numerous or financially in less cannot in those circumstances be said to be similarly situate. Western India Theatres Ltd. v. Cantonment board, Poona. **AIR 1959 SC 582: 1959 SCJ 386: (1959) Supp (20 SCR 63.**

-Art.14- Classification allowed by the Article- Tax on purchasers of hides and skins imposed by Act 9 of 1939 – Validity- burden of proof.

It is well settled that the guarantee of equal protection of laws does not require that the same law should be made applicable to all persons. Article 14 does not forbid classification for legislative purposes, provided that such classification is based on some differential having a reasonable relation to the object and purpose o the law in question.

Further, there is a strong presumption in favor of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similarly circumstanced.

Held, that there was no material on record to show that the purchases of hides and skins were similarly situated as the purchasers of other commodities or that there was any

unreasonable discrimination against them. Syed Mohammad and Co. v. State of Andhra Pradesh. **AIR 1954 SC 314: 1954 SCJ 390: SCR 1117: (1954) 1 Mad LJ 619.**

17 (A). Salex Tax.

-Art. 14- Arbitrary conferment of powers- Sate Sales tax Act obligating deduction of tax at source on payments made to works contractor for irrespective of fact whether sale involved was outside purview of state sales tax –Liable to be quashed as conferring arbitrary powers – See Sales Tax- H.P. General Sales Tax Act (1968), S. 12-A**. AIR 2000 SC 1268: 2000 AIR SCW 958.**

-Art. 14 – False statement in verification of Income-tax return- choice of prosecution either under s. 52- Income-tax Act, 1922 or under s. 177, Penal Code is not Violative of Article.

The choice of prosecuting for submitting false statement in verification of Income- tax returns, either under S. 177, Penal Code or under S. 52 of Income-tax Act, 1922, is not Violative of Art. 14 on the ground that arbitrary and unguided discretion is vested in the Income –tax Officer.

The offence provided for in S. 52 of the 1922 Act is an offence specially constituted and the prosecution for that offence requires the sanction of the Inspecting also can take place if penalty has been imposed under S. 28 of the 1922 Act. The institutional of a complaint under S. 52 of the 1922 Act is therefore circumstances by sufficient safeguards. Baliah v. Rangachari, Income-tax Officer, Central Circle VI. Madras. **AIR 1969 SC 701: (1969) 72 ITR 787: (1969) 1 SCJ 890: (1969) 3 SCR 65.**

-Art. 14 –Income-tax Act (19220, S. 4(3) (xxi) –Exemption from tax –Classification of members of Scheduled Tribe in Government service and those not in Government service- Classification in discrimination –See Income-tax Act (1922), S. 4(3) (xxi). **AIR 1968 SC 658.**

-Art. 14- Income-tax act (1922), S.3-Option to assess either association or its members- does not contravene Art. 14 –See Income-tax Act (1922), S. 3. **AIR 1968 SC 317.**

-Art. 14- Income-tax Act (1961), Chap.XXII-A (as inserted by Finance Act, 1964)- Scheme of annuity deposit -I– is not discriminatory.

The argument that the scheme of annuity deposit incorporated in Chap. 22- A of Income-tax Act, 1961 makes an unlawful discrimination between tax-payers as devoid of force. Article 14 of the Constitution guarantees equality before the law, and equal protection of the laws. But thereby the power of the Legislature to make a reasonable classification for attainting certain objectives is not excluded. If a classification as based on some real and substantial distinction, bearing a just and reasonable relation to the objects sought to be achieved, it is valid. The provisions are not discriminatory. They apply to upper income groups and this does not lead to discrimination. Hari Krishana Bhargav v. Un8on of India. **AIR 1966 SC 619: (1966) 59 ITR 243: (1966) 1 SCWR 402: (1966) 1 SCJ 131.**

-Art. 14- Income-tax Act (1922), S. 10 (2) (vi-b) –Provisions does not contravene Art.14.

On the true interpretation of S. 10 (2) (vi-b) of the Income-tax Act, 1922 it is clear that if an assessee sells to a person other than the Government at any time before the expiry of ten years from the end of the year in which the motor vehicle was acquired, the allowance is deemed to have been wrongly allowed for the purposes of the Act, but if the assessee sells it to the Government no such consequence follows. There is no discrimination, which is hit by Art, 14 the Constitution in such a case. The legislature has directed the giving of a rebate on conditions which are exactly the same for evry assessee sells before the expiry of ten years from the end of

the year in which machinery, etc. was acquired by a person other than the Government, he would forfeit such rebate. The discrimination, if any, arises on the choice made by the assessee. Therefore, S. 10 (2) (vi-b) does not violate Art. 14 of the Constitution. Chittoor Motor Transport Co. (p) Ltd.
v.I.T. Officer, Chittoor. **AIR 1966 SC 570: (1966) 59 ITR 238: (1966) 1 SCWR 303: (1966) 1 SCJ 127.**

-Art. 14-Income-tax Act (1922), S.34 (3), Provision 2 (as amended in 1953) –Constitutional validity of- Assessment years 1944 to 1947 –Notice issued on 18-2-1957- validity of notice.

Proceedings under the Income-tax act, 1922, were started against B on the basis of his successful claim in a suit brought against him by A that he was a partner and not a munim of A. in these income-tax proceedings against B to which A was not a party and order was made on 18-2-1957 that a notice be issued against A in respect of his assessment years 1944 to 1947.

Held per Das and Kapur, JJ. : - As the time limit fixed by S. 34 (1) had expired long before the second proviso to sub-section (3) came into force, the Income-tax Officer has no jurisdiction to issue the notice in respect of the assessment years, 1944 to 1947 and the proviso did not in express terms or by necessary implication revive a remedy which had been lost before 1-4-1952. P.V. Godbole v. Jagannath Fakirchand. **AIR 1963 SC 1399: (1963) 49 ITR (SC) 88; (1963) 1 SCJ 735: (1964 0 1 SCR 130.**

-Art. 14- Income-tax Act (1922), S. 34 (3), Proviso 2 (as amended in 1953) –Constitutional validity of.

Per sarkar, J.: -Proviso 2 to S. 34 (3) offends Art. 14 of the Constitution and is therefore invalid. In so far as it affects persons other than assessee it is void.

Per Hidayatullah and Raghubar Dayal, JJ. : - Those whose tax liability has not been discharged for one reason or another form a distinct class of persons. Some escape payment of tax not because they have omitted or failed to make a true disclosure but because in spite of their full and true disclosure some portion of the income escapes assessment. For such persons there is a smaller period of limitation. But those who are guilty of an omission or failure or who give incorrect particulars or conceal the particulars of their income must stand exposed to action for a longer time. The difference between these two cases is understandable. The section also draws a distinction between two more classes- One above Rs. 1 lakh and the other below it. These two distinctions have never been challenged as discriminatory. Commissioner of I. T. Bihar and Orissa v. Sardar Lakhmir Singh. **AIR 1963 SC 1394: (1963) 49 ITR (SC) 70: (1963) 1 SCJ 729: (1964) 1 SCR 148.**

-Art. 14- Taxation laws- Difference in treatment for defaulters- See Income-tax Act (1922), S. 34(3), Proviso 2 (as amended by Act 25 of 1953). **AIR 1963 SC 1356**.

-Art .14- permissible classification under –Test of –Section 16(3) (a) (I) and (II) do not contravene art. 14.

What Art. 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. Two conditions are laid down for passing the test of permissible classification, namely, (I) the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others let ft out of the group, and (ii) that the differential must have rational relation to the object sought to be achieved by the statute in question.

Under S. 16 (3) (a) (I) and (ii), Income-tax act, an individual is taxed on the income of his wife or his minor children, if he carries on business in partnership with his wife oe if he admits his minor sons to the benefits of the partnership. An individual if he carries on business in partnership with a third party, will be liable only to pay tax on his share of the partnership income. It cannot be said that there is no differential between the two groups; the said differential has also rational relation with the object of the statute as S. 16 (3) (a) (I) and (ii) was enacted of tax. The legislature, therefore, selected for the purpose of classification only that group of persons who in fact are used as a cloak to perpetrate fraud on taxation. Balaji v. I.T. Officer, Akola. **AIR 1962 SC 123: (1961) 43 ITR 393: (1963) 1 SCJ 376: (1962) 2 SCR 983.**

-Art. 14 - Taxation Laws- order under S. 8-A(2) of the Taxation on Income (Investigation Commission) Act (1947) and notice of demand taking place prior to Constitution- Recovery proceedings in pursuance of that order after Constitution came into force- Recovery procedure cannot be challenged as discriminatory- See Taxation on Income (Investigation Commission) Act (1947), S. 8-A(2). **AIR 1962 SC 92.**

-Art. 14- Income –tax Act (1992), S. 10 (2) (vi-b), Second Proviso- Proviso does not offend art. 14 of the Constitution on the ground that it discriminates between machinery which is office appliance or road transport vecles and other kind of machinery –Constitution does not prohibit legislature from choosing object of taxation from various classes of machinery for the purpose of giving development rate- see Income –tax Act (1922), S. 10(2) (vi- b), **1962 Supp (2) SCR 594.**

-Art. 14- Income-tax Act (1922), S. 10(5) – finance Act (1950), S. 12- Taxation Laws (Part B States) (Removal of Difficulties) order (1950), Para2, Expl. - Central Government Notification issued in 1956 adding explanation to para 2 is not ultra vires- It does not also contravene Art. 14 of Constitution.

The true scope and effect of S. 12, Finance Act, 1950, seems to be that it is for the Central Government to determine if any difficulty of the nature indicated in the section has arisen and then to make such order, or give such direction, as appear to it to be necessary to remove the difficulty. Parliament has left the matter to the executive. Hence, notification adding an Explanation to para 2 of Taxation Laws (part B states) (Removal of Difficulties) Order, 1950, is validly made under S. 12 and is not ultra vires the powers conferred on the Central Government by that section. And further, the said notification creates no unequal treatment of persons in a like situation; it applies to all who are in a like situation, namely, all those to whom para 2 of the sad Removal of difficulties Order, 1950, applies. Hence, the challenge to the notification based on Art. 14 is wholly unsubstantial. Commr. Of I. -T., Hyderabad v. Dewan bahadur Ramgopal Mills Ltd**. AIR 1961 SC 338: (1961) 41 ITR 280; (1961) 1 SCJ 540: (1961) 2 SCR 318.**

-Arts. 14, 19 (1) (g0, 32 and 226- Income-tax Act (1922), Ss. 5(7-A) and 64 –Validity whether discriminatory-Whether discriminatory- whether unreasonable restriction on fundamental right to carry on trade- Abuse of power- remedy of aggrieved party.

Section 5(7-A) of the Income-tax act is not Violative of Art. 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental right o carry on trade or business enshrined in Art. 19(1)(g) of the constitution. If there is any abuse of power, it can be remedied by appropriate action either under Art. 226 or under art. 32 of the Constitution and what can be struck down is not the provision contained in S. 5(7-A) of the Act but the order passed thereunder which may be mala fide or Violative of these fundamental rights.

The infringement of a right under S. 64(1) and (2) by the order of transfer under S. 5(7-A) of the Act is not a material infringement. It does not involve a denial of equal rights for the

simple reason that even after such transfer the case is dealt with under the normal procedure which is prescribed in the Act. There is thus no differential treatment and no scope for the argument that the particular assessee is discriminated against with reference to others similarly situated. Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation.

Abuse of power cannot be easily assumed where the description is vested in high officials. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. This presumption, however, cannot be stretched too far and cannot be carried to he extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment.

If, in a particular case, the assessee seeks to impeach the order of transfer ass an abuse of power pointing out circumstances which prima facie would make out the excersise of the power discriminatory quo him, it will be incumbent on the authority to explain the circumstances under which the order has been made. The Court will, in that event, scrutinize these circumstances having particular ragard to the object sought to be achieved by the enactment of S. 5(7-A) of the Act, and come to its own conclusion as to the bona fides of the order and if it is not satisfied that the order was made by the authorities in bon fide excersise of the power vested in them under S. 5(7-A) of the act, it will certainly quash the same.

The power which is vested in the Commissioner of Income-tax or the Central Board of Revenues, as the case may be, under S. 5(7-A) of the Act is not a naked and arbitrary power, unfettered, unguided or uncontrolled power, unfettered, unguided or uncontrolled so as to enable the authority to pick and choose one assessee out of those similarly circumstanced thus subjecting him to discriminatory treatment as compared with others who fall within the same category. The power is guided and controlled by the Act itself, viz., the charge of income-tax, the assessment and collections thereof, and is to be exercised for the more convenient and efficient collection of the tax. M/s Pannalal Binjaraj v. Union of India. **AIR 1957 SC 397: 1957 SCR 233: 1957 SCA 660: (19570 31 ITR 565.**

INCOME -TAX

-Art. 14 –Taxation on Income (Investigation Commission) Act (1947), S. 5(1) –Validity-(Income-tax act (1922), S. 34(as amended by Act (48 of 1948)) and by Act (33 of 1954).

(Per Majority, Jaggannadhadas, J.: - Control)- After the 8th September, 1948, even in the case of substantial evaders of income-tax who were a distinct class by themselves intended to be treated by the drastic and summary procedure laid down by Act (30 of 1947), some cases that were already refereed by the Central Government for investigation by the Commission could be dealt with under the Act and other cases though falling within the same class or category, could be dealt with under the procedure prescribed in the amended S. 34(1) of the Income-tax Act. These previsions, though discriminatory, could not have been challenged before the advent of the Constitution. When, however, the Constitution came into force on the 26th January, 1950, it was open to the persons alleged to become to the class of substantial evaders thereafter to ask as to why some of them were subjected to the summary and drastic procedure prescribes in Act (30 of 1947) and others were subjected to the normal procedure prescribed in S. 34 and the cognate sections of the Income-tax Act, the procedure prescribed in Act (30 of 1947) being obviously

discriminatory and, therefore, violate of the fundamental right guaranteed under Art. 14 of the Constitution. The result, is that baring the cases of persons which were already concluded by reports made by the Commission and the directions given by the Central Government under made by the Commission and the directions given by the Central Government under s. 8(2) of Act (30 of 1947), those cases which were pending on the 26th January, 1950 for investigation before the Commission as also the assessment or reassessment proceedings which were pending on the 26th January, 1950 would be hit by Art. 14 of the Constitution and would be invalidated. M. Ct. Muthiah v. The Commr. Of Income-tax, Madras. **AIR 1956 SC 269: (1956) 29 ITR 390: 1956 SCJ 349: (1955) 2 SCR 1247.**

-Art. 14- Travancore Taxation on Income (Investigation Commission) Act (14 of 1124, M.E.), s. 5(1)- Section 5(1) is not discriminatory and Violative of the fundamental right guaranteed under Art. 14.

The possibility of the Government discriminating between persons and persons falling within the group or category of substantial evaders of income-tax would not render S. 5(1) of the Act discriminatory and void. It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done"not with an evil eye and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory. The object sought to be achieved by the Travancore Taxation on Income (Investigation Commission) Act is to catch substantial evaders of income-tax. Being a class by themselves, the procedure to which they are subjected during the course of investigation of their cases by the Commission is not at all discriminatory because such drastic procedure has reasonable nexus with the object sought to be achieved by the Act and, therefore, such a classification is within the constitutional limitations. The selection of the cases of persons falling within that category by the Government cannot be challenged as discriminatory for the simple reason that it is not left to the unguided or the uncontrolled discretion of the Government. The selection is guided by the very objective which is set out in the terms of S. 5(1) itself and the attainment of theta object controls the discretion which is vested in the Government and guides the Government in Making the necessary selection of cases of persons o be referred for investigation by the Commission. It cannot, therefore, be disputed that there is a valid basis of classification to be found in S. 5(1) of the Act.

Action under S. 5(1) read with S. 8(2) of the Travancore Act (14 of 1124) is definitely limited to the evasion of payment of taxation on income made during the war period. It cannot, therefore, be urged that S. 5(1) of the Travancore Act (14 of 1124) was discriminatory in comparison with S. 47(10 of the Travancore Act (23 of 1121), for the persons who came under S. 5(1) of the Travancore Taxation on Income (Investigation Commission) Act (14 of 1124) which has to be read for this purpose in juxtaposition with S. 47 of the Travancore Act (23 of 11210, cannot be held to be discriminatory and Violative of the fundamental right guaranteed by Art. 14 of the Constitution. A. Thangal Kunti v. M. Venkatachalam. **AIR 1956 SC 246: (1956) 29 ITR 349: 1956 SCJ 323: (1955) 2 SCR 1196.**

-Art. 14- Taxation on Income (Investigation Commission) Act (30 of 1947), S. 5(1) –Drastic procedure- No special or rational nexus –Section is discriminatory and invalid.

The class of persons alleged to have been dealt with S. 5(1) of the Taxation on Income (Investigation Commission) Act was comprised of those unsociable elements in society who during recent years elements in society who during recent years prior to the passing of the Act

had made substantial profits and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1st September, 1948. Assuming that evasion of tax to a substantial amount could from a basis of classification at all for imposing a drastic procedure on that class, the inclusion of only such of them whose cases had been referred before 1st September, 1948 into a class for being dealt with by the drastic procedure, leaving other tax evaders to be dealt with under the ordinary law will be a clear discrimination for the reference of the case within a particular tome has no special or rational nexus with the necessity for drastic procedure.

Assuming the provisions of S. 5(1) of Act (30 of 1947) can be saved from the mischief of Art. 14 of the Constitution on the basis of a valid classification, that defense is no longer available in support of it after the introduction of the new sub-section (1-A) in S. 34 of the Income- tax Act, which sub-section is intended to deal with the same class of persons dealt with by S. 5(1) of Act 30 of 1947- Hence the proceedings before the Investigation Commission can no longer be continued under the procedure prescribed by Act 30 of 1947. Shree Meenakshi Mills Ltd. v. Vishvanatha Sastri. **AIR 1955 SC 13: (1954) 26 ITR 713: 1955 SCJ 62: 1955 SCR 787.**

-Art. 14 –Validity of Taxation on Income (Investigation Commission0 Act (1947), S. 5(4).

Sub-section (4) of S. 5 of the Taxation on Income (Investigation Commission) Act (30 of 1947) offends against the guarantee of equal protection of the laws given in Art. 14 of the Constitution. Both S. 34 of the Indian Income- tax Act and S. 5(4) of Act (30 of 1947) deal with all persons who have similar characteristics and similar properties, the common characteristics being hat they are persons who have not truly disclosed their income. There are substantial differences between h procedures under S. 34 of the Income-tax Act and S. 5(4) of Act (30 of 1947) and the different procedure under the latter operates to the determent of the persons dealt with. Accordingly, s. 5(4) and the procedure prescribed by Act (30 of 19470 in so far as it affects the persons proceeded against under that sub-section being pieces of discriminatory legislation offends against the provisions of Art. 14 of the Constitution and is thus void and unenforceable. Surajmal Mohata and Co. v. A. V. Vishvanatha Sastri. **AIR 1954 SC 545: 1954 SCJ 611: 1955 SCR 448.**

-Arts. 14, 31, 32 and 265- Difference in rates of assessment of income-tax by reason of pending proceedings being continued according to the law of the integrating States prior to integration into the Pepsu state- Art. 14, if infringed- collection of taxes, if deprivation of property within the meaning of Art. 31- Relative scope of arts. 31(1) and 265.

Nabha, one of the States integrated in the Patiala and East Punjab States Union had no Income –tax Act Prior to the integration while Kapurthala another State had its own Income-tax Act. After the integration, the residents of the Nabha State were assessed to income-tax under the law of the Pepsu Union, in respect of the year 2005 while the income of the residents of Kapurthala State law, the rates under which were lower than those fixed in the law of the pepsu State as the proceedings against them were pending on 20th August, 1948 and as the pending proceedings have according to S. 3(1) of the Patiala and East Punjab Stats Union General Provisions (Administration) ordinance, 2006, to be disposal of in accordance with the laws governing such proceedings in fore in any such integrating State immediately before2oth august, 1948.

On a contention that such discrimination offends against the provisions of Art. 14 of the Constitution.

Held, the discrimination if any, was not brought about by the Ordinance, but by the circumstances that there was no Income-tax Act in Nabha State and consequently ther was no case of assessment pending against any Nabha assessee. In any case, the provision that pending proceedings should be concluded according to the law applicable at the time when the rights or liabilities accrued and the proceedings commenced is a reasonable law founded upon a reasonable classification of the assesses which is permissible under the equal protection clause and to which no exception can be taken. There is no infringement of fundamental right under Art. 14 in such a case.

Clause (1) of art. 31 must be regarded as concerned with depravation of property otherwise than by the imposition or collection of tax, for otherwise Art. 265 become wholly redundant. The Constitution has treated taxation as distinct from compulsory acquisition of property and has made independent provision giving protection against taxation save by authority of law. The protection against imposition and collection of taxes save by authority of law directly comes from Art. 31. Article 265 not being in Chap. III of the Constitution, its protection is not a fundamental right which can be enforced by an application to the Supreme Court under Art. 32. Ramjilal v. Income-tax Officer, Mohinder Garh. **AIR 1951 SC 97: 1951 ALL LJ (SC) 16: (1951) 19 ITR 174: 1951 SCJ 203.**

17 (C). Agricultural Income tax.

-Art. 14- Orissa Agricultural Income-tax Act (24 of 1947), Ss. 8 and 9 –Scope of selection pointed out – Constitutional validity of S. 8(1)- Section 8(1) is free from vice of Discrimination under Art. 14 of the Constitution –It invalid and constitutional –See Orissa Agricultural Income-tax act (19470, S. 8. **AIR 1978 SC 1736: 1978 TAX LR 1368.**

-Art. 14-Levy of tax under Kerala Agricultural Income-tax Act (22 of 1950), S. 2 (hh) and (kk) and Sch., Part 1, Cls. (2) and (3) at higher rate on companies incorporated outside India than domestic companies is not Violative of Art. 14 –See Kerala Agricultural Income-tax act (1950), s. 2(hh) and (kk). **AIR 1974 SC 848: 1974 Tax LR 557.**

-Art. 14- Scope- Kerala Plantation (Additional Tax) Act (17 of 1960), as amended by Kerala plantation (Additional Tax) Amendment Act (21 of 1967) –Validity- If contravenes Art. 14- (Per Majority- Shelat and Grover, JJ. Contra).

(Per majority: - Shelat and Grover, JJ. Contra): There is a wide range of selection and freedom in appraisal not only in the objects of taxation and the manner of taxation but also in the determination of the rate or rates applicable. Twyford Tea Co. Ltd.v. State of Kerala. **AIR 1970 SC 1133: (1970) 1 SCC 189: (1970) 1 SCWR 219: (1970) 2 498.**

-Art. 14- Different treatment- Bhopal State Agricultural Income-tax act (9of 1953)- Tax imposed on persons carrying on agricultural operations in Bhopal region- No such tax imposed on operations carrying agricultural operations in other regions of M. P. State- This by itself does not render Act invalid.

Prima facie, a differential treatement is accorded by the State of Madhya Pradesh to operations in the Bhopal region, because the State subjects them to pay by reason of the provisions contained in the Bhopal Sate Agricultural Income-tax Act, 9 of 1953, tax on agricutrial income, which is not imposed upon agricultural income earned in ther rest of the State. But that by itself cannot be a ground for declaring the Bhopal Act ultra vires. Differential treatment becomes unlawful only when it is arbitrary or not supported by a rational relation with the object of the statute. Where application of unequal laws is reasonably justified for historical reasons, a geographical classification founded on those historical reasons would be upheld. AIR

1961 Madh Pra 282, **Reversed.** State of Madhya Pradesh v. Bhopal Sugar Industries Ltd. **AIR 1964 SC 1179: (1964) 52 ITR 443: (1964) 1 SCJ 555: (1964) 6 SCR 846.**

-Art. 14- Plea of denial of equal protection of the laws – proof that should be offered to sustain plea.

To make out a case of denial of the equal protection of the laws under Art. 14 of the Constitution, a plea of differential treatement is by itself not sufficient. An applicant pleading that equal protection of the laws has been denied to him must make out that not only he had been treated differently from others but he has been so treated form persons similarly circumstanced without any reasonable basis, and such differential treatement is unjustifiably made. For instance, a mere plea that the Company and other agriculturists within the region of the former Bhopal State had to pay the agricultural income-tax, whereas the agriculturists elsewhere, in the regions of Madhya Pradesh had not to pay such tax, is not sufficient to make out a case of infringement of the fundamental right under Art. 14 o f the Constitution. State of Madhya Pradesh v. Bhopal Sugar Industries Ltd. **AIR 1964 SC 1179: (1964) 52 ITR 443: (1964) 1 SCJ 555: (1964) 6 SCR 846.**

-**Art**. 14 –Kerala Agricultural Income-tax Act (1950) (as amended by Kerala Act 8 of 1957), S. 5, Explanation 2- Explanation 2 added by Amending Act (9 of 1961), is not ultra vires- See Kerala Agricultural Income-tax Act, 1950 (as amended by Kerala Act 8 of 1957), S. 5. **AIR 1964 SC 572.**

-Art. 14 –Kerala Agricultural Income-tax Act (22 of 1950) (as amended by Kerala Act 11 of 1959), S. 2-A- Constitutionality –Section does not offend the equality clause of the Constitution- See Kerala Agricultural Income-tax Act (22 of 1950) (as amended by Kerala Act 11 of 1959), S.2-A. **AIR 1963 SC 591.**

17 (D). Wealth- tax

-Art.14- Wealth-tax Act (27 of 1957). S.3-Term individual includes group of individuals like Mapilla Tarwad –See Wealth- tax Act (1957), S. 3. AIR 1981 SC 1269: 1981 Tax LR 668.

17 (E). Estate Duty

-Art.14- Discrimination- Estate duty –Aggregation of property- Coparcenary interst in property- No discrimination as regards Mitakshara family and members of Dayabhaga family- Section 34 (1) © of Estate Duty Act (1953) is not Violative of Art. 14- See Esatte Duty- Aggregation of property. 1995 AIR SCW 30: 1995 Tax lr 175.

17 (F). Expenditure Tax.

-Art. 14- Measures for computation of "chargeable expenditure" under Expenditure Tax Act (35 of 1987)- Not vague or arbitrary. AIR 1990 SC 1637: 1990 Tax LR 623.

-Art. 14- Expenditure Tax Act (35 of 1987)- Is not Violative of Art. 14- Bases of classification under the said Act cannot be said to be arbitrary or unintelligible nor as being without any rational nexus with the object of law –See Expenditure Tax Act (1987), S. 5(d). AIR 1990 SC 1637: 1990 Tax LR 623.

-Art. 14- Expenditure Tax At is not Violative Art.14- See Expenditure Tax Act (19876), Pre. **AIR 1990 SC 1637: 1990 Tax LR 623.**

-Art. 14- Expenditure Tax Act (1957), S. 3- Not Violative of Article 14 of Constitution on ground that Maplilla undivided family governed by Marumakkattayam law in North Malabar is not assessable as 'undivided rate- See Expenditure Tax Act (1957), S. 3. **AIR 1969 SC 1094.**

-Art. 14 – Marwar Land Revenue Act (XL of 1949), Ss. 81 to 86 –Abatement of rent when does not result in discrimination.

The settlement of rent being taken up only with reference to portions of the area to which reference to portions of the area to which the Marwar Land Revenue Act applies by starting proceedings for different areas on different dates does not necessarily result in different rates being fixed, and thus making for inequality such as is prohibited by Art. 14 of the Constitution. Settlement operations can be conducted only by a Specialised staff having technical knowledge and administrative experience and it might be beyond them for the whole area at one and the same time. AIR 1954 SC 139 and AIR 1955 SC 504, Rel. on Kishan Singh v. Rajasthan State. AIR 1955 SC 795: 1956 SCJ 14: (1955) 2 SCR 531.

-Art. 14- Marwar Land Revenue Act (40 of 1949), Ss. 81 to 86 –Classification on territorial basis- Sections 81 to 86 do not infringe art. 14.

What Art. 14 prohibits is the unequal treatement of persons similarly situated. Hence when the contention is that Ss. 81 to 86, Marwar Land Revenue Act are void as being repugnant to Art. 14 of the Constitution, then before the petitioners can claim the protection of Art. 14, it is incumbent on them to establish that the conditions which prevail in other areas in the State of Rajasthan are similar to those which obtain in Marwar.

A classification may properly be made on territorial basis if that is germane to the purpose of the enactment. Having regard to the fact that the conditions of tenants vary from locality to locality, a tenancy legislation, such as Ss. 81 to 86 of a State cannot be held on this ground alone to contravene Art. 14 of the Constitution. Kishan Singh v. State of Rajasthan. **AIR 1955 SC 795: 1956 SCJ 14: (1955) 2 SCR 531.**

-Arts. 14, 21- Natural justice –Removal of encroachment by Municipality – Requirement of following of principles of natural justice- Scope and contents.

The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic one to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the Competent Authority is to ensure constant vigil on encroachment of the public paces. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or re-passing of the pedestrians on the pavements of footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Municipal Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of weeks or 10 days, and personal service on the encroachers or submitted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the Component

Authority would be at liberty to have it removed. That would be at liberty to have it removed. That would meet the fairness of procedure and principal of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan. **AIR 1997 SC 152: 1996 AIR SCW 4315: 1997 (11) SCC 121: 1996 (10) JT 485.**

-Arts. 14, 19(1) (g) –Scope –Letter of Intent by Co-operative Society Intimating its intention to appoint respondent as its selling agent- Conditions like furnishing bank guarantee etc. not complied by respondent –Advertisement by him wrongly describing himself as sole selling agent –Society canceling its selling agent –Society canceling its letter of Intent- No mala fide can be inferred- No violation of respondent's fundamental right –No necessity to give prior hearing to respondent.

D.V.C.S.A. No. 169 of 1991, D/-7-8-1991 (Raj) Reversed.

In the instant case the Co-operative Diary Federation Ltd. issued a letter of Intent in favour of the respondent, intimating its intention to appoint the respond as its selling agent. The respondent was asked to comply the certain conditions like submission of irrevocable bank guarantee, execution of and agreement, submission of its balance sheet for past year etc. The respondent did not comply. On the country published an advertisement incorrectly describing itself as the Sole Seeing Agent of the Society. The Society revoked its Letter of Intent.

Held that the Society was within its rights in insisting that the bank guarantee should be submitted before the contract is signed. The society as a prudent businessmen is entitled to satisfy itself about the financial position of the party whom it was appointing as its selling agent. If respondent has nof submitted the requisite documents in this connection and has held itself out as the sole selling agent when to its knowledge, there was no intention of appointing the respondent as the sole selling agent, these were valid circumstances which the society could take into a contract and bind itself legally with respondent or not. In these circumstances, if the considered as arbitrary action on the part of the society Violative of any Fundamental Rights of respondent. When the reasons for cancellation of contract were clearly set out in the decision not to enter into a contract with respondent the extraneous circumstances alleged by the respondent could not make the decision malafide.

The doctrine of audit alteram partem could not also be imported in these circumstances. If the conduct of respondent was such that it did not inspire any confidence in the appellant, the society was entitled to decline entering into any legal relationship with respondent as its selling agent.the Letter of intent merely expressed an intention to enter into a contract. If the conditions stipulated in the Letter of Intent were not fulfilled by respondent and if the conduct of respondent was otherwise not such as would generate confidence, the society was entitled to withdraw the letter of Intent. There was no binding legal relationship between the society and respondent at this stage and the society was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with respondent or not. Rajasthan Co-operative Dairy Federation Ltd. v. Shri Maha Laxmi Mingrate Marketing Service Pvt. Ltd. **AIR 1997 SC 66: 1996 AIR SCW 4219: 1996 (10) SCC 405: 1996 (2) UJ (SC) 699: 1996 (8) JT 351.**

-Art. 14- Natural justice- Tender- Non award of conduct to bidder on ground that it was black – listed by an order by Government department- Show cause notice to bidder- Not necessary- Authority was only taking note of existing order and not sitting in judgement over such order or itself issuing such order. Decision of Patana High Court, Reversed. Patna Ragional

Developemnet Authority v. M/s. Rashtriya Pariyojana Niramn Nigam. **AIR 1996 SC 2074: 1996 AIR SCW 2495: 1996 (4) SCC 529: 1996 (6) JT 113: 1996 (2) SCJ 456.**

-Arts. 14, 226- Natural justice –vesting of power in State or its officers to decide and determine to the prejudice of citizens- Exercise of – Nature of statutory duty necessarily implies obligation to hear before deciding.

It is one of the fundamental rules of our constitutional set up that every citizen is protected against excersise of arbitrary authority by the State or is officres.if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the execersise of such power and the rule of natural justice operates in areas not covered by any law validity made. What particular rule of natural justice should apply to a given case must depend to an extent in the facts and circumstances of that case, the frame- work of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand the nature of the statuary duty imposed itself necessarily implied the giving of an opportunity to be heard, but on the other hand the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the audi alteram partem rule could be imported. SC and Weaker of Karnataka. **AIR 1991 SC 1117: 1991 AIR SCW 1010: (1991) 1 UJ (SC) 628: 1991 (2) SCC 604: 1991 (2) JT 184.**

30. Compulsory acquisition of property.

Land Acquisition

-Art. 14 –Amalgamation of banks- Powers of Central Govt. –Central Govt. is empowered to frame scheme for placement of employees of transferor Bank in the transferee Bank- And for the determination of their inter se seniority with employees of transferee Bank -Opportunity of hearing to employees of transferor Bank not necessary- See Banking Laws- Banking Companies (Acquisition and Transfer of Undertakings) Act (1980), S. 9. **AIR 1996 SC 3208: 1996 AIR SCW 1997.**

-Art. 14-Land Acquisition Act (1of 1894), S. 23-Compensation –Determination of Higher of Higher compensation in favour of one co-owner of acquisition land –Denial thereof to other owners- Is not Violative of Art. 14- Subject matter having been regulated under Land Acquisition Act- right and remedy for higher compensation would be sought under it. Ramesh Singh (Died) by LRs v. State of Haryana. AIR 1996 SC 3066: 1996 AIR SCW 1488: 1996 (4) SCC 469: 1996 (5) JT 467.

-Art. 14- Nationalisation of undertaking –Requisite nexus of Act with Art. 39(b) is clear and duty established –Act is immune to challenge on any ground based on Art. 14 –See Central India Spinning. Weaving and Manufacturing Company. Limited the Empress Mills Nagpur (Acquisition and Transfer of Undertakings) Act (19860, Pre**. AIR 1996 SC 2797: 1996 AIR SCW 3563: 1996 Lab IC 2518.**

-Art.14- Housing scheme by Development Authority –Allotment of flats- Escalation of cost –Allottee is bound to bear not only escalation in construction cost but also escalation of value of land when Court enhances compensation for land acquired under Land Acquisition at various stages.

W. P. No. 88 of 1995, D/- 6-6-1995 (Himpra), **Revers.** Shimla development Authority v. Asha Rani. **AIR 1996 SC 1591: 1996 air SCW 1849: 1996 (8) SCC 487: 1996 (3) JT 400.**

-Art.14-Provisions as to acquisition of race club under Madras Race Club Act, 1986 are discriminatory –See Madras Race Club (Acquisition and Transfer of Undertaking) Act (1986), Pre. **AIR 1996 SC 1153: 1996 AIR SCW 713: 1996 Cri LJ 1635.**

-Art. 14- Acquisition for housing scheme- Some land initially notified under S. 4 excluded from acquisition- Nonexcusion of petitioner's land from such acquisition- Cannot be assailed- See Land Acquisition and Regulation- Land Acquisition Act (1894), S.4, **AIR 1996 SC 866: 1996 AIR SCW 250.**

-Art. 14- Discriminatory treatment- Land urgently needed for joint venture project of Karnataka Industrial Area Development Board- Urgent need could not be fulfilled under Karnataka Act- Recourse to provisions of Land Acquisition Act- Cannot be faulted. S.S. Darshan v. State of Karnataka. **AIR 1996 SC 671: 1995AIR SCW 4680: 1996 (7) SCC 302: 1995 (8) JT 229: 1995 (4) SCJ 601.**

-Art. 14- Acquisition proceedings- Land policy issued by State Govt. –Appellant subsequent owner of land after publication of notification for acquisition of land- Not entitled to benefits of Land policy – Said benefits given to other co-owners as a special case and whose formed part pf particular strip of land –No individuals discrimination meted out to appellant. Smt. Sneh Prabha v. State of U. P. **AIR 1996 SC 540: 1995 AIR SCW 4449: 1996 (7) SCC 426: 1995 (8) JT 267: 1995 (4) SCJ 636.**

-Art.14- Rajasthan Land Acquisition Act (24 of 1953), S.4- Discrimination- Certain party granted exception of his lands from acquisition –Wrong exception under wrong action does not cloth others, to get the same benefit –Art. 14 also cannot be pressed into service on ground of discrimination. Yadu Nandan Garg v. State of Rajasthan. **AIR 1996 SC 520: 1995 AIR SCW 4420: 1996 (1) SCC 334: 1995 (8) JT 179: 1995 (4) SCJ 615.**

-Art.14- Section 7(1-A) of Assam Land (R and A) Act. 14- See Land Acquisition and Requisition _Assam Land (Requisition and Acquisition) Act (1948), S. 7(1-A), **1996 AIR SCW 4052.**

-Art.14- Land granted for special cultivation –Requisition of –Concurrent finding after elaborate consideration that land was fallow, uncultivated at time of requisition –Compensation- Determination of, under S. 7 (1-A) and not S. 7(1) –Not Violative of Art. 14- See Land Acquisition and Requisition – Assam Land (Requisition and Acquisition) Act (1948), S.7 (1-A). **1996 AIR SCW 4052.**

-Art. 14- Jammu and Kashmir Requisition and Acquisition of Immovable Property Act not providing for solatium and interst- Not Violative of Art. 14 of Constitution –See Tenancy Laws –Jammu and Kashmir. Requisition and Acquisition of Immovable Property Act (1968), S. 8(d). **1996 AIR SCW 4020.**

-Art.14- Land acquisition –For construction of Govt. Office- Govt.occupying some more area while construction of office and compound wall- Suit by owner of Land –Mandatory injunction issued by Court for demolition of compound wall and to restitute possession to owner- Exercise of power of eminent domain and isuance of notification under S. 4(1) in respect of disputed land – Can neither be said to be colourable exercise of power nor Acquisition and Requisition –Land Acquisition Act (1894), S. 4. **AIR 1995 SC 2480: 1995 AIR SCW 3653: 1995 ALL LJ 1795.**

-Art.14 - S. 4 of T. N. Acquisition of Land for Harijan Welfare Schemes Act is not arbitrary – See Land Acquisition and Requisition –Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (1978), S.4. **AIR 1995 SC 2114: 1995 AIR SCW 355.**

-Art.14- Land acquisition- Compensation- Payment in installments- Provisions as to in T.N. Acquisition of Land for Harijan Welfare Schemes Act, 1978 is discriminatory. **AIR 1995 1995 AIR SCW 355.**

-Art.14- Absence in T.N. Acquisition of land for Harijan Welfare Schemes act, of provision for reference similar to that under L.A. Act not discriminatory. **AIR 1995 SC 2114: 1995 AIR SCW 355.**

-Art.14- Compensation foe land acquired –Non-specification of matters that are to be considered- Not of any consequence- See Land Acquisition and Requisition –Tamilnadu Acquisition of Land for Harijan Welfare Schemes Act (1978), S. 4. **AIR 1995 SC 2114: 1995 AIR SCW 355.**

-Art.14- T. N. Acquisition of Land for Harijan Welfare Schemes Act, 1978 not Violative of Art. 14 except S. 14. **Air 1995 SC 2114: 1995 AIR SCW 355.**

-Art.14- Provisions of S. 7 of Acquisition of Certain Area at Ayodhya Act 33 of 1993 –Not discriminatory- See Land Acquisition and Requisition- Acquisition of Certain Area at Ayodhya Act (1993), S. 7(2). **AIR 1995 SC 605: 1994 AIR SCW 4897.**

-Art.14- Acquisition of Land for construction of steel plant- Compensation at market rate given – Besides, each displaced family protected by giving one person from each family whose land was acquired, job in steel factory- Claim that each and every adult member of displaced families has to be given job or future generation should be ensured employment – Acceptance of such claim would be against Art. 14- See Ibid, Art. 21. **1995 AIR SCW 2388.**

-Art.14- Acquisition of land for private Co-operative Housing Society – Its purpose was to transfer acquired land to its members alleged to be possessing more than one house- Failure of Govt. to consider said aspects before accepting report under S. 5-A and contributing Rs. 100 for each acquisition and declaration under S. 6 of Land Acquisition Act held, was colourable exercise of power- See Land Acquisition and Requisition- Land Acquisition Act (1894), S. 6. **1994 AIR SCW 3261.**

-Art.14- Interest on compensation- Reduction in rate of interst from 6% to 4% on enhanced market value in view of Land Acquisition Act (as amended by A.P. Act 12 of 1953)- Not discriminatory- See Land Acquisition and Requisition- Land Acquisition Act (1894), S. 34. **1994 AIR SCW 2852.**

-Art.14- Solatium and interst –Not granted by S. 8(3) (a) of Requisitioning and Acquisition of Immovable Property Act- Provisions is not discriminatory- See Requisitioning and Acquisition of Immovable Property Act (1952), S. 8(3)(a). **1993 AIR SCW 105.**

-Art.14- Acquisition of electric supply undertaking –Compensation –Non- consideration of property of licensee in unexpired period of licence –Does not render S. 9 of Assam Act 10 of 1973 arbitrary as Assam Act is protected by Art. 31-C of Constitution. **AIR 1990 SC 123.**

-Art.14- Town planning Act (Travancore Act 4 of 1108) (as now applicable to Kerala), S. 34- Validity- Exclusion of S. 25 of Land Acquisition Act is unconstitutional- Exclusionary part being severable section will be read omitting the words 'and S. 25', State of Kerala v. T.M. Peter. **AIR 1980 SC 1438: (1980) 3 SCC 554: 1980 UJ (SC) 530: (1980) 3 SCR 290.**

-Art.14- Land Acquisition Act (1894), S. 17- Acquisition –Emergency powers –Exercise of –Real urgency must exist –See Land Acquisition and Regulation –Land Acquisition Act (1894), S. 17. **AIR 1980 SC 319.**

-Art.14- W.B.Oriented Gas Company Act (1960), S. 8(1) (b) –Acquisition of undertaking of company- Calculation of average income –Basis not arbitrary- See W.B. Oriented Gas Company Act (1960), S. 8(1) (b). **AIR 1979 SC 248.**

-Art. 14-Section 2 as well as all the provisions of the East Punjab Movable Property (Requisitioning) Act (15 of 1947) are Violative of Art. 14 of Constitution as it confers uncontrolled powers on the State Government or its officers to requisition any moveable property –See East Punjab Moveable Property (Requisitioning) Act (1947), S. 2. **AIR 1974 SC 543.**

-Art.14- East Punjab Moveable Property (Requisitioning) Act (15 of 1947)- Protection against Art. 14- Not available under Art. 31 (5)- See Ibid, Art. 31(5). **AIR 1974 SC 543.**

-Art.14- Sections 3 and 4 of the Land Acquisition (M.P. Amendment) Act (5of 1959) are hit by Art. 14. See Lad Acquisition (M.P. Amendment) Act (1959), S. 3. **AIR 1973 SC 1383.**

-Art.14, 245, 246, 254 and Schedule 7, List III, Item 42- Power of State Legislature to validate retrospectively acquisition of land offending Art. 14- Banglore Acquisition of Lands (Validation) Act (Mys. Act XIX of 1963), S. 1- Constitutionality- Legislature had power to validate past acquisition by getting over discriminations caused by two existing procedures – AIR 1962 Mys 218, **Reversed** on basis of subsequent event. State of Mysore v. D. Achiah Chetty. **AIR 1969 SC 477: (1969) 1 SCC 248: (1969) 1 SCJ 709: (1969) 3 SCR 55.**

-Art. 14- Provisions of Section 4 of land Acquisition (Amendments and Short Title Validations) Act do not violate Article 14 of the Constitution- See Land Acquisition and Requisition – Land Acquisition (Amendments and Short Title Validations) Act (1967), S. 4. **AIR 1968 SC 1138.**

-Art. 14 –Land Acquisition Act (1894), S. 17 (4)- Art. 14 not violated –Classification of land on basis of urgency of acquisition reasonable – Principle and policy for guidance of State Govt. for issuing direction laid down –See Land Acquisition and Requisition –Land Acquisition Act (1894), S. 17 (I). **AIR 1968 SC 870.**

-Art. 14- Assam Acquisition of land for Flood Control and Prevention of Erosion Act (VI of 1955), S. 1- Act is discriminatory and violates Art. 14. See Assam Acquisition of Land for Flood Control and Prevention of Erosion Act (1955), S. 1. **AIR 1968 SC 394.**

-Art .14- Land Acquisition Act (1894), Ss. 49(1) (aa), 44-B (as amended in 1982) –Validity- Provisions do not contravene Art. 14.

Per Majority: It is true that acquisition for the purpose of Cl. (aa) of S. 40 (1) Land Acquisition Act, can only be made for a Government company or a public company and cannot be made for a private company or an individual but there is a clear classification between a public company and a Government company on the one hand and a private company and an individual on the other which has reasonable nexus with the objects to be legislature clearly is that private individuals of the legislature clearly companies which really consist of a few private individuals bonded together should not have the advantage of acquiring land even though they may be intending to engaged in some industry or work which may be for a public purpose inasmuch as the enrichment consequent on such work goes to private individuals or to group of them who have formed themselves into a private company. Public companies' ion the other hand are broadbased and Government companies are really in a sense no different from Government, though for convenience of administration a Government company may be formed which thus becomes a separate legal entity. Thus in one case the acquisition results in private enrichment while in the other way. Therefore a distinction in the matter of acquisition of land between public companies and Government companies on the one hand and private individuals and private companies on the other is justified, considering the object behind Cl. (aa) as introduced into the Act, R.L. Arora v. State of U.P. **AIR 1964 SC 1230: (12964) 2 SCJ 652: (1964) 6 SCR 784.**

-Art.14- Land Acquisition Act (1894) as amended by Act 31 of 1962- Validity –See Ibid, Art. 31 (2). **AIR 1964 SC 1230.**

-Art. 14- Discrinmation –Land Acquisition Act (1894), S. 6- Acquisition of land for public purpose –Power of State to fix proprieties among public utilities of different kinds- State choosing particular industry and declaring it to be public purpose for purposes of acquisition –Art. 14 of the Constitution not violated.

Per Majority: It is always open to the State to fix priorities amongst public utilities of different kinds, bearing in mind the needs of the State, the existing facilities and other relevant factors. It is for the State Government to say which particular industry may be regarded as beneficial to the public and to decide purpose. No question of discrimination would therefore arise merely by reason of the fact that Government has declared that the establishmen5 of a Particular industry is a public purpose. Somawanti v. of Punjab. **AIR 1963 SC 151: (1963) 2 SCJ 35: (1963) 2 SCR 774.**

-Art. 14- Scope –Assam State Acquisition of Zamindaris Act (18 of 1951) –Validity.

The Assam State Acquisition of Zamindaris Act cannot be said to be void on the ground of discrimination for the reason that the State can pick and choose the estate of one Zamindar and leave out those of their favorite ones. Raja Bhairabendra Bhup v. State of Assam. **AIR 1956 SC 503: 1956 SCJ 543: 1956 SCR 303: ILR (1956) 8 Assam 469.**

-Art. 14- Assam State Acquisition of Zamindris Act (18 of 1951)- If offends Art. 14.

The Acquisition of Lakheraj estates within the boundaries of permanently settled estates clearly facilities he object of acquiring permanently settled areas and such Lakheraj estates not so situate and, therefore, the charge of discrimination cannot, in view of the principal laid down by the Supreme Court, apply to the impugned Act. Raja Bhairebndra Bhup v. State of Assam. **AIR 1956 SC 503: 1956 SCJ 543: 1956 SCR 303: ILR (1956) 8 Assam 469.**

-Art.14-Requisition order-Public Purpose –Housing the homeless is a public purpose –Requisition for purpose of housing the informants of 'Suppressed vacancies' and Government servants –See Land Acquisition and Requisition –Bombay Land Requisition Act (1948) as amended by Bombay Act (1950), S.5. **AIR 1955 SC 41.**

31. Legislation relating to ceiling on land.

-Art.14- Exemption to land in excess of ceiling limit from chap. II of urban Land (Ceiling and Regulation) Act- Reasoned order not necessary- Se Urban Land (Ceiling and Regulation) Act (1976), S. 20(1) (a). **AIR 1994 SC 923: 1994 AIR SCW 344.**

-Art.14- Provisions as amended are measur34e at land reform- Absence of provisions fixing ceiling on area of land in Act is not material Amendment Act is entitled to protection under Art. 31- A. **AIR 1990 SC 1771.**

-Art. 14-S. 15 of Rajasthan Imposition of Ceiling on Agricultural Holding Act (1973) is not Violative of Art. 14. **AIR 1990 SC 404.**

-Art.14- Except S. 27(1) entire Act (33 of 1976) is valid- See Urban Land (Ceiling and Regulation) Act (1976), Section 2(f). **AIR 1985 SC 1650.**

-Arts. 14, 31-A, 31-B- A.P. Land Reforms (Ceiling on Agricultural Holdings) Act (1 of 1973), S. 3(f)- Family unit- Definition of –It is saved by protective umbrella under Arts. 31-A and 31-B and also on other considerations- Definition is not Violative of Art. 14. Begulla Bapi Raju v. State of A. P., **AIR 1983 SC 1073: (1984) I SCC 66: 1983 UJ (SC) 1038: (1983) 3 SCR 701.**

-Art.14- Holding-Definition of –Same land can be land comprising 'holding' of transfer as well as of transferee in view of definition of that term –Provisions cannot be said to be unreasonable-

See Tenancy Laws- A.P. Land Reforms (Ceiling on Agricultural Holdings) Act (1973), S. 3(i) .**AIR 1983 SC 1073.**

-Art. 14-Contitutional validity of Urban Land (Ceiling and Regulation) Act (1976)- Except S. 27(I), entire Act is valid –See Urban Land (Ceiling and Regulation) Act (1976), S. 2(f). **AIR 1981 SC 234.**

-Art.14- Sections 3(f) and 4 of the Hariyana ceiling on Land Holdings Act (1972) is not Violative of Articles 14- See Tenancy Laws- Haryana Ceiling on Land Holdings Act (1972), S. 3(f). **AIR 1980 SC 2097.**

-Art.14- Uttar Pradesh Imposition of Ceiling on Land Holdings Act (1961), S. 5(3) –Not ultra vires Art. 14 of Constitution on Ground of sex discrimination. Ambika Prasad Mistra v. State of U.P. **AIR 1980 SC 1762: (1980) 3 SCC 719: 1980 UJ (SC) 844: (1980) 3 SCR 1159.**

-Art.14- Maharashtra State Agricultural Lands (Ceiling on Holdings) Act 27 of 1961 (as amended by Act, 13 of 1962), Preamble- Act as amended is valid- Mention of principal Act without mention of Amending Act in Item 34 in Sch. 9 to the Constitution by Constitution (7th Amendment) Act, 1964, includes all amendments up to the date of the Constitution (7th Amendment) Act. State of Maharashtra v. Madhavrao. **AIR 1968 SC 1395: 1968 Lab IC 1525: (1968) 2 SCWR 704: (1969) I SCJ 81.**

-Art. 14- Madras Land Reforms (Fixation of Ceiling on Land) Act (58 of 1961), Ss 5(1) 50 and Chapters 2, 3- Validity –Provisions violate Art. 14- whole Act is unconstitutional.

'Family' has been given an artificial definition in S.3 (140. Further S. 5(1) of Act 58 of 1961, fixes a double standard for the purpose of 'ceiling'. The provision of S. 5(1) results in discrimination between persons equally circumstanced Section 9(1) is Violative of the fundamental right enshrined in Art. 14 of the Constitution. As the section is the basis of Chapter 2 of the act, the whole Chapter must fall along with it. The provisions contained in S.50 read with Sch. 3 of the Act with respect to compensation are discriminatory and violate Art. 14 of the Constitution. Sections 5 and 50 are the pivotal provisions of the Act, and if they fall then the whole Act must be struck down as unconstitutional. The working of the entire Act depends on S. 5 which provides for ceiling and S.50 which provides for compensation. If these sections are unconstitutional, the whole Act must fall. A.P. Krishnaswami Naidu v. State of Madras. **AIR 1964 SC 1515: (1964) 1 SCWR 580: (1965) 1 SCJ 239: (1964) 7 SCR 82.**

-Art.14- Assam Fixation of Ceiling of Land Holding Acts (1of 1957)- Act falls within the protection of Art. 31-A of the Constitution- It is also not a colorable piece of legislation- Hence it is constitutially valid –See Tenancy Laws –Assam Fixation of Ceiling on Land Holdings Act (1957). **AIR 1962 SC 137.**

-Art. 14 –Rajasthan Land Reforms and Resumption of Jagirs Act (6of 1952) –Validity.

It was contended that jagirs of the petitioner had been taken possession of by the State in 1949 under S. 8-A of the Rajasthan Ordinance No. 27 of 1948 which was held to be void under Art. 14, that the present Act came into force on 8th February, 1952, and that the Government having wrongly taken possession of the Ordinance, instead of returning them to the petitioners notified thus managed to continue in possession, and that in he result, these jagirdars had been treated differently from the jagirdars in other States of Rajputana to whom S. 8-A did not apply and Articles 14 had been contravened.

Held, that the Mewar jagirdars having lost possession under a legislation which had been held to be void the rights which they had over the jagirs until the date of the present notifications would remain unaffected and no unequal treatment could result therefrom. And, moreover, the

present Act makes no discrimination in the matter, as it applies to all the jagirs in Rajasthan. Amar Singhji v. State of Rajasthan. **AIR 1955 SC 504: 1955 SCJ 523: 1955 (2) SCR 303.**

-Art.14- Rajasthan Land Reforms and Resumption of Jagirs Act (6of 1952), S. 21- Validity.

The Act confers no power on the Government to grant exemption to grant exception. All the jagirirs, therefore, are liable to be resumed under S. 20, no option being left with the Govetment in the matter. It was the intention of the Legislature that all jagir lands should be resumed under S. 21. The provision that under S. 21 the State is authorised to resume different classes f jagir lands on different dates, and that must result in the law operating unequally was obviously dictated by practical considerations such as administrative convenience and facilities for payment of compensation and cannot, be held to be discriminatory. Amar Singhji v. State of Rajasthan. **AIR 1955 SC 504: 1955 SCJ 523: (1955(2) SCR 303.**

-Art.14- Estate abolition legislation- reasonable classification- Section 8-A of the Rajasthan Ordinance 27 of 1948 violates Art. 14 and is declared void -See Tenancy laws-

United State of Rajasthan Jagirdars (Abolition of powers) Ordinance (1948), S.8-A. (Inserted by Ordinance 10 of 1949 and Amended by Ordinance 1949). **AIR 1954 SC 297.**

-Art.14- Section 3 of Orissa Estates Abolition Act (1 of 1952) is not discriminatory- See Tenancy Laws- Orissa Estates Abolition Act (1952), S. 3. **AIR 1954 SC 139.**

41. Land encroachment laws.

-Art .14- Tamil Nadu Land Encroachement Act (3 of 19050, Pre. - Constitutionality of the Act- Act does not violate Art. 14- See Tenency Laws –Tamil Nadu Land Encroachment act (1905), Pre. **AIR 1974 SC 2044.**

42. Urban Rent Control Laws.

-Art.14-Deposit of rent –Section 15 of Bihar Buildings Act empowering Court to require tenant to pay arrears prior to institution of suit- Not arbitrary or ultra vires powers of State Legislature- See Houses and rents –Bihar Buildings (Lease, Rent and Eviction) Control Act (19830, S. 15. **AIR 1997 SC 2561: 1997 AIR SCW 2508.**

-Art.14-East Punjab Urban Rent Restriction Act (3 of 1949), S. 13 (as amended by Act 29 of 1956)- Amendment has taken away right of landlord to evict tenant from non- residential premises for his bona fide requirement- It is discriminatory- Act, initially provided confirming to its objects and reasons bon fide requirements of premises by landlord whether residential or non-residential as ground of eviction of tenant- Classification created by Amendment has no Nexus with object sought o be achieved by Act.

Decision of Punjab and Haryana High Court, **Reversed.** Haribilas Rai Bansal v. State of Punjab. **AIR 1996 SC 857: 1996 AIR SCW 238: 1996 (1) SCC 1: 1996 (1) SCJ 160: 1995 (8) JT 458.**

-Art. 14- Limitations placed by S. 2 (I) (iii) of Delhi Rent Control on rights of heirs of statutory tenants of residential premises only is reasonable- See Houses and Rents- Delhi Rent Control Act (1958), S. 2 (I) (iii). **AIR 1995 SC 55: 1994 AIR SCW 4059.**

-Art.14- S. 14-D of Delhi Rent Control Act (59 of 1958) (as inserted by Amendment Act of 1988)- Not Violative of Art. 14. AIR 1991 SC 99.

-Art.14- Classification of tenants on basis of income- Benefit of Jammu and Kashmir Houses and Shops Rent Control Act taken away in respect of rich tenants –No discrimination. Delhi Cloth and General Mills Ltd. v. S. Paramjit Singh. **AIR 1990 SC 2286: 1990 (4) SCC 723: 1990 (4) JT 110: (1991) 1 Bank CLR 207: (1991) 1 SCJ 36.**

-Art.14- Eviction for non-payment of rent- Prohibition under S. 13- A of Rajasthan Premises (Control of Rent and Eviction) Act against passing of eviction decree in pending cases -A–plicablity- Violation of Art. 14- See Houses and Rents –Rajasthan Premises (Control of Rent and Eviction) Act (1950), S. 13-A. **AIR 1989 SC 1534.**

-Art.14- Classification of buildings with reference to date of completion for purposes of regulating rent and eviction of tenants- Not invalid- See Houses and Rents- East Punjab Urban Rent Restriction Act (1949), S. 3. **1989 (2) 96 Pun LR 1 (SC).**

-Art.14- T.N. Buildings (Lease and Rent Control) Act (18 of 1960), Ss. 14 (1) (a), (b), 16- Eviction for repairs and for reconstruction- provision as to reinduction of tenant made in case of repairs- Absence of such provision in case of reconstruction of premises- S. 14 (1)(b) not rendered discriminatory thereby- S.14 cannot be declared discriminatory by comparison with Rent Acts of other States. (1959- 60) 64 Cal WN 932, Overruled.

In cases of reconstruction of buildings it is not practicable and would be anomalous to expect a landlord to take back a tenant after a long lapse of time during which time the tenant must necessarily have found some suitable accommodation elsewhere. This is the true purpose behind S. 14(1) (b) read with S. 14(2) (b). In the aforesaid view of the matter, it cannot be said that in propvidsing for re-induction of the tenant in case of repairs and not providing for re-induction of the tenant in case of repairs and not providing for such reinduction in case of reconstruction, there is any unreasonable and irrational classification without any basis.

Art.14 of the Constitution does not authorities the striking down of a law of one Sate on the ground that in contrast with a law of another State on the same abject its provisions are discriminatory. Nor does it contemplate law of the Center or of the State dealing with similar subjects being held comparative study of the provisions of two enactments. Therefore the contention that in most of the Rent Acts, there is provision for reinduction of the there is no such provision in case of reconstruction in the Tamil Nadu Rent Act and therefore it is Violative of Art. 14 has no force.

The main provision of S. 14 (1) (d) enables a landlord tom make an application to the rent Controller and that the Rent Controller, if he is satisfied that the building is bona fide required by the landlord fir the immediate purpose of demolishing it for the purpose of erecting a new building on the site of the erecting a new building on the site of the building sought to be demolished may pass an order directing the tenant o deliver possession of the building to the landlord before a specified date. The phrase used in S. 14 (1) (b) is "is building was bona fide required by the landlord" If the Rent Controller had to be satisfied about the bona fide requirement of the landlord which meant genuiness of his claim in that behalf the Rent Controller would have to take into account all the surroundings circumstances including not merely the factors of the landlord being possessed of sufficient means or funds to undertake the project and steps taken by him in that regard but also the existing condition of the buildings, its age and situation and possibility or otherwise of is being put to a more profitable use after reconstruction. There must be bona fide need of the landlord on all the conditions required to be fulfilled. That being the Scheme of the section, it cannot be said, that the section is arbitrary and excessive powers were given to the landlords. Absence of provisions for reinduction of tenant does not ipso facto make the provisions of the unfair or make the Act self-defeating.

The provisions of the Act impose restrictions on the landlord's right under the common law or the Transfer of property Act to evict the tenant after termination of his tenancy. The rational of these restrictions on the landlord's rights is the accurate shortage of accommodation and the consequent need to give protection to the tenants against unrestricted eviction. The

nature, the form and the extent of the restrictions to be imposed on the landlord's right and the consequent extent of protection to be given to the tenants is a matter of legislative policy and judgement. It is inevitably bound to vary from one Sate to another depending on local and peculiar conditions prevailing in the State and the Individual State's appreciation of the needs and problems of its people. There can be no fixed and inflexible criteria or grounds governing imposition of restrictions on the landlord's right or for relaxation of those restrictions in certain cases. Ultimately it is a matter of legislative policy and judgement. Courts are not concerned with the unwisdom of legislation. "In short, unconstituonlity and not unwisdom of a legislation is the narrow area of judicial review". In a classification for governmental purpose there cannot be an exact exclusion or inclusion of persons and things. Therefore, a large latitude is allowed to the States for classification upon any reasonable basis. Classification, therefore, is justified if it is not palpably arbitrary. There is no consensus among the different States about the right of re-induction of tenant in case of eviction required for demolition. It will depend on the Particular State and, Appreciation of the Particular State and, appreciation of the need and problem at a particular point of time by the State concerned. The purpose underling S. 14(1) (b) read with S. 16(2), Tamil Nadu Rent Act, is to remove or mitigate the disinclination on the part of landlords to expend moneys for demolition of dilapidated buildings in their places. It is a matter of which judicial notice can be taken that the return from old and dilapidated buildings prove uneconomic for the landlords with the result that the condition of the building deteriorates and there are even collapses of such buildings. It is for this purpose that the landlord is given by S. 14(1) (b) read with S. 16 an incentive in the from of exemption from the provisions of the Ret Act in respect of reconstructed building for the limited and short duration of five years. The policy under S. 14(1) (b) read with S. 16 is not in essence different from the policy adopted by different States of giving exemption for a limited duration to newly constructed buildings. The absence of the right of induction of tenants in reconstructed premises is therefore neither arbitrary nor unreasonable. S. 16(2) which provides that when a building is totally demolished and on which a new building is erected shall be exempt from all the provisions of the Act for a period of five years is not bad. The principal underlying such exemption for a period of five years ids not discriminatory against tenants, nor is it against the policy of the Act. It only serves as incentives to the landlord for creation of additional housing accommodation to meet the growing needs of persons who have no accommodation to reside or to carry on business. It does not create a class of landlords who will for ever be kept outside the scope of the Act as the provision balances the interests of the and lords on the one hand and the tenants on the other in reasonable way. Prabhakaran Nairv. State of Tamil Nadu. **AIR 1987 SC 2117: (1987) 4 SCC 238: (1987) 3 SCJ 269: (1987) 100 Mad LW 987.**

-Art. 14- Condition that landlord should not have any other reasonably suitable accommodation under S. 14(1)(c) of Delhi Rent Control Act; 1958- Does not violate Arts. 14 and 21 of constitution. **AIR 1987 SC 741.**

-Art.14- Eviction- Bona fide requirement- Condition that landlord should not have any other reasonably suitable accommodation does not violate Art. 14- See Houses and Rents- Delhi Rent Control Act (1958), S. 14(1) (c). **AIR 1987 SC 741.**

-Art.14-Tamil Nadu Buildings (Lease and Rent Control) Act (18 of 1960), S. 30 (ii)- Classification in S. 30 (ii) of tenets of residential buildings fetching tem of benefits of Act- It is without any basis –S. 30 (ii) is Violative of Art Rents- Tamil Nadu Buildings (Lease and Rent Control) Act (1960), S. 30 (ii). **AIR 1986 SC 1444: 1986 All LJ 1168.**

-Art.14- Exemption of houses for 10 years from provisions of Act- Classification for, on basis of construction of houses before and after commencement of Haryana Act (11 of 1973) not arbitrary and not Violative of Art. 14 – See Houses and Rents- Haryana Urban (Control of Rent and Eviction) Act (1973), S. 1(3). **AIR 1986 SC 244.**

-**Art. 14-**Standard rent- Determination under Delhi Rent Control Act- Discretion of Rent Controller- not unfettered and unguided- See Houses and Rents- Delhi Rent Control Act (1958), S. 2(k). **AIR 1985 SC 339.**

-Art.14-Notificationb exempting buildings owned by all Co-operative Societies from provisions of T.N. Act 18 of 1960- Does not offend Art, 14- See Houses and Rents- Tamil Nadu Buildings (Lease and Rent Control) Act (1960), S. 29. **AIR 1985 SC 270.**

-Art.14- Total exemption granted ton buildings owned by Hindu Christian and Muslim religious public trusts and public charitable trusts under T.N. Act 18 of 1960 –It is not Violative of Art. 14- See Houses and Rents- Tamil Nadu Buildings (Lease and Rent Control) Act (1960), Pre. **AIR 1985 SC 257.**

-Art. 14- New procedure incorporated in Chap. III-A of Delhi Rent Control Act- Is in public interst- Not Violative of Article 14-See Hoses and Rents –Delhi Rent Control Act (1958), Chap.III-A. **AIR 1984 SC 967.**

-Art.14-Delhi Rent Control act (1958), S. 25-B- S. 25-B is not violative of Art. 14 of Constitution.

The classification made by S. 25-B is a reasonable classification and cannot be said to be any way discriminatory or arbitrary. Even though a summary procedure has been evolved the tenant has been afforded full opportunity to defend the application.

The right of the tenant is sufficiently safeguarded by the proviso to sub-S. (8) of Section 25-B of the Act. In order to give relief to the tenant against any apparent error of law or fact where no revision has benefited in the High Court the statute confers power of review on the Controller.

Thus**,** it cannot be said that S. 25-B and its sub-sections are Violative of Art. 14 of Costitiution or that S. 25-B suffers from the vice of excessive delegation of powers. Kewal Singh v. Mt. Lajwanti. **AIR 1980 SC 161 ☹1980) 1 SCC 290: (1980) 1 SCWR 345: (1980) A SCJ 486.**

-Art.14- Public Premises (Eviction of Unauthorised Occupants) Act (41 of 1971), S. 15- Constitutional validity- section is not Violative of Art. 14 becomes of the procedure of application to Revenue Officer for ejectment being available under Section 43 of Punjab Tenancy Act-See Houses and Rents- Public Premises (Eviction of Unauthorised Occupants) Act (1971), S. 15. **AIR 1972 SC 2205.**

-Arts. 14, 245- Public Premises (Eviction of Unauthorised Occupants) Act, 1971, retrospectively removing discrimination resulting from tow procedures provided under the 1958 Act –It is within legislative competence to enact such a validating Act.

If there is legislative competence the legislature can put out of action retrospectively one of the procedures leaving one procedures only available and thus removing the vide of discrimination. The 1958 Act was challenged on the ground that there were two procedures and the choice of either was left to the unguided discretion of the Estate Officer. The 1971 Act does not leave any such discretion to the Estate Officer. Under the 1971 Act there is only one procedure. The deeming provision contained in Section 20 of thew 1971 Act validates actions done by virtue of the provisions of the 1971 Act. Hari Singh v. Millitary Estate Officer. **AIR 1972 SC 2205: (1972) 2 SCC 239: (1972) 2 SCWR 508: (1973) 1 SCR 515.**

-Art.14-S. 5 of the Punjab public Premises and Land (Eviction and Rent Recovery) Act (1959) is unconstitutional as it violates Art. 14. 1963 PLR 344, **Held overruled** in (1967) 3 SCR 399. Mool Raj v. State of Punjab. **1970 Ren CJ 101 (SC).**

-Art.14- Notification under East Punjab Urban Rent Restriction Act, 1949, S. 3 exempting Government premises from operation of the Act- Section is not open to attack as a denial of equal protection of the laws and also is not a piece of excessive delegation as the preamble and the operating provisions of the Act give sufficient guidance to an authority for the purpose of issuing notification. Sadhu Singh v. District Board, Gurdaspur. **(1969) 1 SCWR 139: 1969 Ren CR 156.**

-Art.14- Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1959), S. 5 –Validity – Act does not repeal remedy of eviction under ordinary law – S. 5 is discriminatory and violative of Art. 14. AIR 1963 Punjab 290 (FB), Reversed.

The Objects and Reasons of the Punjab act XXXI of 1959 show that the Legislature intended to provided an additional remedy to the Government, a remedy which it thought was speedier than one by way of a suit under the ordinary law of eviction. There is nothing in the Act to warrant the conclusion that it impliedly takes the right of suit by Government or that, therefore, it is substitute and not supplemental. Nor is it possible to say that the co-existence of the two remedies would cause such inconvenience or absurdity that the Court would be compelled to infer that the enactment of the Act resulted in an implied deprivation of the Government's right to sue in the ordinary Courts.

Per Majority (Hidayatullah and Bachawat, JJ., control): Assuming that persons in occupation of Government properties and premises form a class by themselves as against tenants and occupiers of private owned properties and that such classification is justified on the ground that they require a differential treatment in public inters, those who fall under that classification are entitled to equal treatment among themselves. There can be no doubt that S.5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of pubic properties and premises for the application of the more drastic procedure under Section 5, that section has lent itself open to the charge of discrimination and as being Violative of Art. 14. In this view Section 5 must be declared to be void.

(Per Hidayatullah and Bachawat, JJ.:) It is not pretended that the proceeding under the impugned Act is unfair or oppressive. The Act does not suffer from any blemish and must be upheld. Northern India Caterers (Private) Ltd. v. State of Punjab. **AIR 1967 SC 1581: (1967) 2SCWR 707: (1968) 1 SCJ 475: (1967) 3 SCR 399.**

(Overruled in AIR 1974 SC 2009.)

-Art. 14- S. 7-A, Delhi and Ajmer Rent Control Act- Is not unconstitutional as Violative of Art. 14 –See House and Rents –Delhi and Ajmer Rent Control Act (1947), S. 7-A. **AIR 1963 SC 1060.**

-Art. 14- Reasonable classification- Madras City Tenants Protection Act (3 of 1922), S. 2(as amended by Madras Act, 13 of 1960)- Protection given by amending Madras Act 19 of 1955 to non-residential tenants taken away by amending Madras Act 13 of 1960 in respect of such tenants residing in certain town- Existence of real difference found between non-residential tenants living in different towns –Madras Act 13 of 1960 is not discriminatory.

The Madras City tenants Protection Act, 1921. (Mad. Act III of 1922) was amended by Mad. Act 19 of 1955. In exercise of the powers conferred by Act 19 of 1955, the Government

made an order notifying the Town of Tanjore to have come within the purview of the principal Act. The rights which the tenants had inter alia acquired under the 1955 Act were: (i) they were entitled on ejectment to be paid as compensation the value of the building erected by them or by their predecessor- in- interest, (ii) the court before issuing a decree for eviction should ascertain the amount due to a made conditional on the payment of the decree amount, (iii) in suits where decree for ejectment had been passed before the 1955 Act came into force a tenant could file an application for

Ascertainment of the compensation due in excution and for a fresh decree to be passed in accordance with S. 4 of the principal Act, and (iv) he had also a right, at his option, to apply within the prescribed his option, to apply within the prescribed time to the Court, whether a decree for ejectment had or had not been passed. Subsequently, by Mad. Act 13 of 1960 the principal Act was again amended. The effect of the amendment was to withdraw the protection given to tenants of non-residential buildings in the municipal town of Tanjore and certain other towns. A further results of this amending Act in respect of non- residential buildings, in places other than the city of Madras and the other specified municipal towns was that all proceedings pending in courts in respect of those buildings abated and the rights acquired by tenants under the 1955 Act in respect of the said buildings were extinguished. The contention of the tenants of the non-residential buildings in tanjore was that the 1960 Act infringed their fundamental right under Art. 14 of the Constitution for two reasons, namely (i) provisions of the 1960 Act introduced a classification between non-residential buildings in different municipal areas and such a classification had absolutely no relevance to the object sought to be achieved by the Act: and (ii) the 1960 Act made a distinction between non- residential buildings in Madras, Salem, Madurai, Comibatore and Tiruchirapalli on the one hand and those in other though the alleged differences between the two sets of localities had no reasonable relation to the object sought to be achieved, namely, the protection of tenants who had built substantial structure, from eviction.

Held (1) that the provision of the principal Act applies both to residential and non-residential buildings. So too the 1955 Ac. Therefore, when in the 'object and reasons' attached to Act 13 of 1960 the authors of that the main object of safeguarding the tenants from eviction from of residential quarters, they were object only emphasizing upon the main object but were not excluding the operation of that Act to non-residential buildings. So it was not correct to state that the object of the Act was only to protect the tenants of residential buildings: (2) that on the basis of the allegations made in the affidavit filed on behalf of the State of Madras, supported as it was by the statistical data furnished to the Court there were real differences between non-residential buildings in the towns of Tiruchirapalli and those in other towns of the Madras State had reasonable nexus to the object sought to be achieved by the Act.S. 2 as amended by 1960 Act was not discriminatory. Swami Motor Transports (P.) Ltd. v. Shri Sankaraswamigal Mutt. **AIR 1963 SC 864: (1964) I SCJ 530: (1963) Supp 1 SCR 282: (1964) 1 MLJ (SC) 146.**

-Art. 14- Classification of premises into old and newly constructed premises and prescribing different procedures for fixation of standard rent does not violate guarantee of equal protection guaranteed by Art. 14 of the Constitution- See Houses and Rents- Delhi and Ajmer- Merwara Rent Control Act (1947), S. 7-A. **AIR 1962 SC 646.**

-Arts. 14 and 226- Rent Control legislation- Power vested in Government to exempt particular building or buildings from operation of Act- Whether offends Article 14- Madras Buildings (Lease and Rent Control) Act (25 of 1949), S. 13- Constitutionality- Individual orders of Government passed under S. 13- Whether subject to judicial review, under Art. 226- Grounds on which exception cannot be justified.

-ART. 14-U.P. Act (5 of 1954), S. 6- Constitutionality- Act does not offend Article 14 of the Constitution- See Tenancy Laws- U.P. Consolidation of Holdings Act (5of 1954) (as amended by U.P.Act (16 of 1957), S. 6. **AIR 1959 SC 564: 1959 All LJ 601.**

-Art.14- Expediency of legislation –Power of Court to go into- Rajasthan (Protection of Tenants) Ordinance (9 of 1949), S. 7(1)- Constitutional validity.

It cannot be said that under S. 7 (1) of the Rajasthan Ordinance (9 of 1949) landlords who had tenants on their lands on April 1, 1948 were subjected to various restrictions in the enjoyment of their rights as owners, while other landlords were free from similar restrictions. The preamble to the Ordinance recites the object of the legislation and the expediency thereof, the Legislature had necessarily to decide from what date the law should be given operation, and it decided that it matter exclusively for the Legislature to determine, and the propriety of that determination is not open to question in Courts. Inder Singh v. The State of Rajasthan. **AIR 1957 SC 510: 1957 SCJ 376: 1956 SCR 605.**

-Art. 14- Scope- Rajasthan (Protection of Tenants) Ordinance (9 of 1949), s. 15- Validity.

Section 15 of the Rajasthan (Protection of Tenants) Ordinance, 1949 does not itself indicate the grounds on which exemption could be granted but the preamble to the Ordinance sets out with sufficient clearness the policy of the Legislature, and the decision of the Government cannot be said to be unguided. Inder Singh v. State of Rajasthan. **AIR 1957 SC 510: 1957 SCJ 376: 1957 SCR 605.**

-Art. 14- S. 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and S. 3-A of the Bombay Housing Board Act, 1948 do not contravene art. 14, Constitution- See Houses and Rents- Bombay Rents, Hotel and Lodging House Rates Control Act (1947), S.4. **AIR 1954 SC 153.**

-Arts. 14, 133 –Cement industry- Fixation of uniform retention price for all producers- Based on except opinion- Founded on relevant factors- No interference –Differential treatment given to only uneconomic unit Held, not discriminatory.

The cement industry was itself in favour of a single uniform retention price for all producers. The fixation of the Uniform retention price by the Govt. at Rs. 100.00 per tonne is based on the weighted average increase of Rs. 7.00 in the cost of production and the weighted average retention price on the basis of three different retention prices determined at Rs. 93.00 per tonne on the basis of expert opinion. Fixation of a uniform retention price being clearly permissible and the same having been determined at Rs. 100.00 per tonne on the basis of expert opinion, founded on relevant factors, it could not be interfered with within the limits of permissible judicial review. Since there was a rational basis fore classifying one unit differently as a substandard and on uneconomic unit without any scope for improvement in comparison to other units, the challenge on the basis of Art. 14 of the Constitution to the fixation of a uniform retention price of Rs. 100.00 per tonne would not be tenable.

Cl. 12 of Cement Control Order does not in any manner restrict the Central Government's power to fix a uniform retention price for all the units specified in the Schedule to the Order. The Central Government's power to refix the price can be exercised 'having regard any change in any of the factors relevant for determination of price of cement'. The meaning of the expression 'having regard to' is well settled. It indicates that the exercising the power, regard must be had also to the factors enumerated together with all factors relevant for excersise of that power. One such factor specified in Cl. 12 is " such as an increase or decrease n the cost of production or distribution'. Admittedly, the fixation of the uniform retention price at Rs. 100.00 per tonne was made on the industry's demand for revision of the price as result of increase in the

cost of production, the only dispute between the industry and the central Government being with regard to the extent of increase and not to the effect toto the extent of increase and not to the effect of increase or the mode of increase by fixation of a uniform price. Therefore it could not be said that fixation of one uniform retention price for all producers was not permissible under cl. 12. India Cement Ltd. v. Union of India**. AIR 1991 SC 724: 1990 (3) JT 572: (1990) 2 UJ (SC) 584: 1990 (4) SCC 356.**

73. Local Authorities (including District Boards and Municipal Bodies).
-Arts. 14, 226- Contractual field- Judicial review- Mahapalika agreeing to construct underground shopping complex in park- Entrusting construction to a private builder- Tenders not invited –Construction of shopping complex in park against Municipal Act and against master plan- Agreement to constructed totally one sided favouring builder- Mahapalika totally ousted from the complex for an indefinite period- Requirement of Ss. 128, 129 of Municipal Act- Violated- Contract liable to be set aside.

The Mahapalika permitted a private builder to construct a underground shopping complex in a park of historical importance. The construction of shopping complex in the park was against the Municipal Act and master plan for the city. Under the terms of the agreement it was for the builder to make constriction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. Nobody knows how much cost the builder is likely to incur and how long it will continue to be in possession of the shopping complex. Full freedom has been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and Mahapalika shall be bound by these terms and conditions. Builder has also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder may deem fit and proper. Builder is only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder shall remain bound by the terms of that agreement. Since there is no project report nobody knows how many shops the builder would construct and of what sizes. 5,000/- per shop for every second and subsequent transfer of shops by the builder but what amount is to be charged for the first transfer or subsequent transfers is left to the sole discretion of the builder. A bare glance at the terms of agreement shows that not only that the clauses of thee agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of commercial area has been handed on a platter to the builder for it to exploit and to make run away profits. As a matter of fact on examining the terms of the agreement it is clear that Mahapalika has been completely ousted from the underground-shopping complex for and indefinite period. It has completely abdicated its functions. The agreement is completely one-sided favouring the builder. The land of immense value has been handed over to it to construct underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. Mahapalika, though considers to be the owner of the land, is completely ousted and diverdsed pf the land for period which is not definite and which depends wholly on the discretion of the builder. The agreement defies logic. It is outrageous. It crosses all limits of rationality. Mahapalika has certainly acted in fatuous manner in entering into such an agreement. The agreement is liable to be set aside.

The reason for the construction of underground shopping complex given was that it would remove the congestion in the area. The report of the Local Commissioner, however, states that it would rather lead to more congestion. It becomes therefore clear that a decision to construct underground shopping complex by the builder had already been taken and that the whole process was gone into to confer undue benefit to Builder and the bogie of congestion was introduced to justify the action of the Mahapalika. It is wholly illegal and smacks of arbitrariness, unreasonable and irrationality.

Granting licence to the builder to construct underground shopping complex of permanent nature and o old on to the same for s period which is not definite and then under the impugned agreement builder having been authorised to lease out the shops on behalf of the Mahapalika, was a dubious method adopted to subvert the provision of S. 128 which apply as well inn the case of lease and thus the truncation will also be covered by the expression "otherwise dispose of any interst in the property " in S. 128. In such a situation for the builder to contend that the transaction is not covered by S. 128 and, therefore, S. 129 will not apply is certainly incredulous. Provision of S. 129 of the Act has, therefore, been flouted. Impugned agreement is bad having been executed also in contravention of the requirement of S. 1229 of the Act.

The agreement is fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme is so lucrative could be seen from the fact that all shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interst and pubic exchequer have been sacrificed. Mahapalika is divested of its control over the project though notional not for ever but the builder, on the other hand, has control over the project for all times to come and construction is in contravention of the provisions of law as contained in Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahaplalika was not on proper consideration and was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. The mainatnace of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction Mahapalika had deprived its residents as also others of the quality of life to which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favoritism. The agreement was opposed to public. It was not in public interst. Whole process of law was subverted to benefit the builder without inviting tenders. Though competence of the builder was not doubtful. No attempt was made whatsoever to consider if there was any other person more competent for the job or it of equal competence could offer better terms. Public interst has certainly been given a go- by. There was some undercurrent flowing to award the contract to M.I. Builders. M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu. **AIR 1999 SC 2468: 1999 AIR SCW 2619: 1999 ALL LJ 1802: 1999 (4) Scale 209: 1999 (6) Supreme 273: 1999 (6) SCC 464**: **1999 (5) JT 42.**

-Art. 14-Municipal tax- Proviso to S. 406 (2) (e) of Bombay Provincial Municipal Corporation Act limiting powers of judge to dispense with condition of deposit only up to 25% of disputed tax- Validity –See Municipalities –Bombay Provincial Municipal Corporation Act (1949), S. 406 (2) (e). **AIR 1999 SC 1818: 1999 AIR SCW 1415.**

-Art. 14- Encroachment- Removal of –Corporation giving 21 days notice to encroachers- Thus giving hearing to them before taking action for ejectment not necessary- See Municipalities-

Bombay Municipal Corporation Act (1888), S. 63 (I) (19). **AIR 1997 SC 152: 1996 AIR SCW 4315.**

-Art.14- Reasonable classification –Shopping complex of Municipality- Allotment of shop- Stall- holders running shops on certain land for more than 3 decades- Land underneath shops required for road widening- Allotment to such stall- holders of shops in shopping complex at concessional rate and without trade zone restriction- Not unreasonable. Gursharan Singh v. New Delhi Municipal Committee. **AIR 1996 SC 1175: 1996 AIR SCW 749: 1996 (2) SCC 459: 1996 (1) JT 647.]**

-Art. 14- Levy of Municipal tax- Valuation of holdings- Classification of buildings on basis of type of construction- Mere possibility of better classification- Is no ground to strike down classification made by statute, more particularly in taxing enactment- See Municipalities- Patna Municipal Corporation Act (1952), S. 227. **AIR 1995 SC 885: 1995 AIR SCW 695.**

-Art. 14- Compulsory transfer of land to municipality without compensation under Punjab and Haryana Municipal Acts- Provisions Violative of Art. 14- See Municipalities- Punjab Municipal Act (1911), S. 192. **AIR 1994 SC 2550: 1994 AIR SCW 3598.**

-Art. 14- Municipalities- Ban on passing plans of buildings exceeding 13.5 meters in height for period of one year- Made in view of injunction orders of High Court prohibiting publication of new Building Rules and since old Building Rules were unsuitable- Ban hence cannot be said to be Violative of Art. 14- See Municipalities- Calcutta Municipal Corporation Act (1980), S. 398-A. **(1994) 7 JT 524.**

-Art. 14 – Tehbazari- Grant of –Sub-classification of howkers into two classes namely, those possessing survey report receipt on a particular date and those not possessing that receipt but are in a their squatting -–ot proper. Gainda Ram v. M.D. C. Town Hall. 19993 (3) JT 396.

-Art. 14- Delhi Municipal Corporation Act (1957), S. 170 (b)- Levy of property tax- Appeal –S. 170(b) is intra vires. **AIR 1992 SC 2279: 1992 AIR SCW 2764.**

-Art. 14- U.P. Nager Mahapalika Adhiniyam (1959), s. 172 (2) (I) –Theatre tax- Classification of theatres on basis of their rental value for fixing tax –Not arbitrary –Not violative of Art. 14.

-Art. 14- discrimination, what amounts to –Provisions creating right of appeal against taxation- Provision that the appeal shall not lie unless the assessee first pays the tax demanded is not violative of Article 14 as discriminating between those who do not. Ahmedabad Municipal Corporation Taxation Rules, R. 42. (1973) 14 Guj LR 826, Reversed. Anant Mills Co. Ltd. v. State of Gujrat. **AIR 1975 Tax LR 1540: (1975) 2 SCC 175: (1975) 3 SCR 220**

-Art. 14- Bombay Provincial Municipal Corporations Act (1949), Section 437-A (1) (as inserted in Gujrat by Gujrat Act 19 of 1964)- Section 437- A (1) of Provincial Municipal Corporations Act not violative of Art. 14.

Where the statute itself covers only a class of cases, the statute will not be bad on that ground. The feature that such cases are chosen by the statute to be tried under the special procedure laid down there will not affect the validity of the statute.

A statute which deals with premises belonging to the Corporation and te Government and lays down a special speedy procedure in the matter of evicting unauthorised persons occupying them is a sufficient reason to support such special procedure. The policy and the purpose of the Act make it clear that the Legislature intended to make the statute appliclabe to a special class and provide a speedy method of recovering possession of these properties. Section 437- A (1) does not offend Article 14. **AIR 1967 SC 1581, Held no longer good law** in view of AIR 1974

SC 2009, (1970) 11 Guj LR 1, **Reversed.** The Ahmadabad Municipal Corporation v. Ramanlal Govindram. **AIR 1975 SC 1187: (1975) 1 SCC 778: 1975 UJ (SC) 438: (1976) 1 SCJ 250.**

-Art. 14- Bombay Municipal Corporation Act (1949), S. 437-A (1) (as inserted in Gujrat by Gujrat Act 19 of 1964)- Provisions of Section 437-A (1) rot unreasonable on the ground that the Commissioner is a Judge in his own cause.

The conferment of power on the Municipal Commissioner as an Administrative Officer to take proceedings for eviction cannot be struck down as unreasonable on the ground that he is a Judge in his own cause. He is the highest officer of the Corporation. The Corporation acts through thses officers. There is no personal interst of the Municipal Commissioner in evicting thses persons. The Corporation represents public interst. The Municipal Commissioner, thresfore, would apply his mind to the facts and circumstances of a given case as to whether there should be an order from eviction. If the Municipal commissioner wrongly excerises his power the action cannot be said to be bad in law for Want of reasonableness. The Ahmedabad Municipal Corporation v. Ramanlal Govindarm. **AIR 1975 SC 1187: (1975) 1 SCC 778: 1975 UJ (SC) 438: (19760 1 SCJ 250.**

-ART. 14- Bombay Municipal Corporation Act (3 of 1888), Chap. V-A. (Sections 105 –A to 105 –H), S. 105-B **–**Bombay Government Premises (Eviction) Act, 1955 (2of 1956), S. 4 (as it stood prior to its amendment in 1969)- Constitution- its amendment in 1969)- Constitutionality- Not Violative of Article 14 on ground of unjust discrimination- See Municipalities- Bombay Municipal Corporation Act (3 of 1888), Chap. VA, Ss. 105- A and a05- B. **AIR 1974 SC 2009.**

-**Art. 14-** Modifications made by Sections 372 and 376 of the U.P. Nagar Mahapalika Adhiniyam (2 of 1959), in the Land Acquisition Act are Violative of Article 14- See Municipalities –U.P. Nagar Mahapalika Adhiniyam (1959), S. 372.**AIR 1974 SC 1202: 1975 ALL LJ 395 .**

-Art. 14 –Mere absence of provision maximum rate in Act which delegates power to the Corporation to levy property tax does not per se render such delegation in any manner arbitrary or excessive- Bombay Provisional Municipal Corporations Act (59 of 1949), Section 129 (prior to amendment in 1968).

The delegation of power on Corporation to levy property tax is valid because Act contains policy or principles furnishing guidance to delegate in exercising such power. G. B. Modi v. Ahamedabad Municipality. **AIR 1971 SC 2100: 1971 Tax LR 1360: (1971) 1 SCC 823: (1971) 3 SCR 942.**

-Art. 14- Classification of vacant land s under Corporation Act- Not unreasonable or discriminatory- See Municipalities- Banglore City Municipal Corporation Act (69 of 1949), S. 99(2)(b). **AIR 1971 SC 1321.**

-Art. 14- Punjab Municipal Act (1911), Section 173- Sale of cooked food on Public streets stopped by resolution of Municipal Committee- Alternative sites not allotted to all squatters- No question of discrimination arises- No question of discrimination arises- there is no fundamental right to carry on aforesaid street trading- See Municipalities- Punjab Municipal Act (1911), S. 173. **AIR 1968 SC 133.**

-Arts. 14 and 32 –Bombay Provincial Municipal Corporation Act (59 of 1949), Sections 127 (1) and (3), 406 and 411; Schedule, Chapter, VIII, Rules 7(1), 9(b), 15 and 18- Property Tax on textile mills, factories, buildings of Universities, etc., imposed by Municipal Corporation of Ahmadabad- Flat rate method according to floor area adopted for determining rent for fixing ratable value- Method held against law and Violative of Articles 14. New Manek chowk

Spinning and Weaving Mills Co. Ltd., etc. v. Municipal Corporation of the City of Ahmadabad. **AIR 1967 SC 1801: (1968) 1 SCJ 332: (1967) 2 SCR 679: 14 Law Rep 304.**

-Art. 14-Power to levy tax on a part of municipality is not arbitrary or unguided power- Notification by Bareilly Municipal Board imposing house tax and scavenging tax in civil lines area only held was not void under Art. 14 –See Municipalities- U.P. Municipalities Act (1916), S. 128(1). **AIR 1964 SC 370: 1964 All LJ 479.**

-Art. 14 –Reasonable classification –Disqualification prescribed by S. 16 (1) (ix), Orissa Municipal Act does not violate Article 14.

The classification in S. 16 (1) (ix) has a reasonable relation to the object or purpose sought to be achieved and hence the disqualification prescribed by the section does not violate Art. 14. Sakhawant Ali v. State of Orissa. **AIR 1955 SC 166: 1955 SCJ 262: 1955 SCR 1004: 21 Cut LT 88.**

-Art. 14- State Housing Board- Allotment of house in phases- Land cost charged at higher rate to allottees receiving possession at later stage- No discrimination when land costs at different phases were land costs at different phases were arrived at on basis of costing principals.

In the instant case the Rajasthan Housing Board allotted houses to allottees ijn four quartes depending upon the houses becoming ready (including completion of development of land sewerage System etc.). The land cost to the allottees of first quarter to whom possession of houses was given earlier was charged at lower rte as compared to the charged at lower rate as compared to the allotteess of remaining quartes to whom possession of houses was given later.

Held that, by charging land cost at enhanced rate to the allottees of the 2nd, 3rd and 4th quarter as compared to the allottees of the 1st quarter the Housing board did not commit any discrimination. The Rajasthan Housing Board in its Brochure as well as in its Rules and Regulations had made it clear that the cost of the house would differ for each quarter depending upon in which quarter the letter of allotment /possession would be issued to the allottee. How the cost of a house would be worked out is provided under the Rules falling under the caption "Cost of Underdeveloped Land." The Cost of development was determined by the Rajasthan Housing Board by applying the costing principals in the following manners:- (I) Levelling and dressing of the Ground; (ii) Construction of bituminous roads ; (iii) cost of drains and culverts; (III) Cost of water supply lines; (v) Cost of electric lines; (vi) Cost of sewer lines; (vii) Cost of street lights; (viii) Cots of plantation, horticulture and parks: (ix) Misc.

In addition to the above heads, the cost of development shall also include the cost of constructions of the following items: -

(i) Primary School /Higher Secondary School; (ii) Hospital / Dispensary; (iii) Community Centres. The total expenditure on development is worked out on the basis of actual expenditure plus anticipated expenditure.

The land cost which was determined by the housing Board is in consonance with the brochure and the costing principles.

Although the construction of the houses of the 2nd and 3rd quarters was completed and, therefore they were not ready for occupation and consequently the possession thereof was delayed by about nine months. Since the allotment letters of the houses of second quarter fell during the financial year 19909-91, he land cost stood enhanced in view of the costing principals. The same was true inn respect of third and forth quarter houses as the financial year 1991-92 on different dates. The completion of the construction of the houses in respect of second and third quarters was delayed beyond the control of the Housing Board. Consequently, the land

cost was required to be re-determined on the basis of costing principals. All these factors were very much known to the allottees when they entered into agreements with the Rajasthan Housing Board and they were fully aware of the terms and conditions set out in the Brocher and other relevant Rules and Regulations. Thus the Rajasthan Housing Board had committed no error while determining the land cost differently in respect of second, third and fourth quarters based on the costing principles. The Rajasthan Housing Board had borrowed huge sums from various financial institutions for which it was required to pay the interst thereon. The allottees are unable to demonstrate that the land cost determined by the Rajasthan Housing Board was in violation of any of the terms and conditions mentioned in the Brochure and / or Rules or Regulations or I had deviated from the Board's policy of providing houses on no profit no loss basis. Awasan Mandal Parijit Uch Ayawarg Sangharsh Samiti through President v. Rajasthan Housing Board. **AIR 1998 SC 2933: 1998 AIR SCW 2379: 1997 (9) SCC 641: 1997 (10) JT 725: 1997 (3) SUPREM 353: 1997 (3) Scale 168.**

-Art. 14- Housing Scheme for Govt. employees- Conversion of Scheme form rental basis to Hire-Purchase basis- Exclusion of category such of those employees working in Sachivalayaa (Secretarial) and originally allotted house at one place but later they shifted their residence and they vouluaentrily vacated the houses and shifted to the houses allotted at other place with better accommodation on confessional basis and those who had been transferred outside capital on a permanent basis- Held, not illegal . P. V. Gupta v. State of Gujtar . **1995 AIR SCW 1540: 1995 Lab IC 1745: 1995 SCC (L and S) 782: 1995 Supp (2) SCC 182: 1995 (2) JT 373.**

-Art. 14- Constitution of New Okhala Development Area Authority- Housing Schemes- Reservations- Discrimination. **AIR 1987 SC 1262.**

-Art. 14- Maharashtra Housing and Development Act (28 of 1977), Ss. 44(3) (4)- Provisions are protected from being challenged under Arts.14, 19 and 31 in view of Art. 31-c which applies to case – See Town Planning and Housing –Maharashtra Housing and Development Act (28 of 1974), S. 44 (3). **AIR 1986 SC 1466.**

-Art. 14-Maharashtra Housing and Development Act (28 of 1977), S. 44- Acquisition of land situated in Municipal limits- Determination of amount of compensation- Valuation of lands in Municiaple limits governed in respect of rural lands governed by Land Acquisition Act- Provisions of S. 44 (3) and (4) of Housing Act are not Violative of Art. 14- See town Planning and Housing –Maharashtra Housing and Development Act (1977), section 44 (3). **AIR 1986 SC 1466.**

78. Improvement trusts.

-Art. 14- Sections 78-A to 78- G of Calcutta Improvement Act –Not Violative of Article 14- See Town Planning and Housing –Calcutta Improvement Act (1911), S. 78- A. AIR 1977 SC 2034.

-Art. 14-Provisions of Section 59 (a) of Punjab Town Improvement Act (1922) are not Violative of Art. 14- See Town Planning and Housing –Punjab Town Improvement Act (1922), S. 59 (a). **AIR 1975 SC 394.**

-Art.14- Paras. 10 (2) and 10 (3) of the Schedule to the Nagpur Improvement Trust Act in so far as they add a new clause (3) (a) to Section 23 and a proviso to Sec. 23 (2) of the Land Acquisition Act are unconstitutional being Violative of Article 14 o the Constitution.

The Government can acquire the land for a housing accommodation scheme either under the Land Acquisition Act or under the Improvement Act. Thus it enables the State Government to discriminate between one owner equally situated from another owner and calculate

compensation on different basis. 1969 Mah LJ 272, Affirmed. Nagpur Improvement Trust v. Vithal Rao. **AIR 1973 SC 689: (1973) 1 SCC 500: (1973) 1 SCWR 127: (1973) 2 SCJ 656.**

-Art. 14 – Rejection of application under S. 56 of Punjab Town Improvement Act, if violates Art. 14.

If person has failed to bring his case within Section 56 of the Punjab Town Improvement Act then merely because some either partly had erroneously succeeded in getting his lands exempted ostensibly under that section that by itself would not cloth e former with a right to secure exemption for their lands. The rule of equality before the law or of the equal protection of the laws under Article 14 cannot be invoked in such a case. Narain Das v. Improvement Trust. AIR 1972 SC 865: 1972 UJ (SC) 696: (1972) 3 Civ App J (SC) 333.

-Art. 14- Madras City Improvement Trust Act (1950), Section 73- Provision depriving right to solatium under S. 23 (2) of the Land Acquisition Act – Violates Articles 14 of the Constitution- See Towen Planning and Housing –Madras City Improvement Trust Act (1950), S. 73. **AIR 1968 SC 1425.**

79. Town Improvement Laws.

–Art. 14- Natural justice –Eviction of occupant of Property falling within Town planning Scheme- To be after giving hearting of occupation and by a reasoned order –See Town Planning and Housing –Bombay Town Planning and Housing –Bombay Town Planning Act (1955), S. 54. **AIR 1997 SC 31: 1996 AIR SCW 4180.**

-Art. 14-Town Planning Scheme –Notice of - Tenants, expect who were in possession on date of publication of notification –Not entitled to any notice- See Town Planning and Housing –Bombay Town Planning Act (1955), R. 21. **AIR 1994 SC 480: 1993 AIR SCW 3900.**

-Art. 14- Bombay Town Planning Act, (1955), S. 32- Appeal provided only against some decisions of Town Planning Officers- Act not discriminative for that reason- See Town Planning and Housing –Bombay Town Planning Act (1955), S. 32. **AIR 1986 SC 468.**

-Art.14- Bombay Town planning Act, (1955), S. 53- Acquisition of land under Town Planning Scheme – Not Violative if Arts. 14 and 31 (2) for not extending procedure of Land Acquisition Act- See Town Planning and Housing –Bombay Town Planning Act (1955), S. 53 **AIR 1986 SC 468.**

-Art. 14- Bombay Town planning Act (27 of 1955), S. 54- Bombay Town planning Rules (1955), R. 27- Section 54 and Rules (2955), R. 27- Section 54 and Rule 27 are not ultra vires Art. 14 of Constitution –Mere absence of corrective machinery by way of appeal would not render the provision invalid.

Section 54 of Bombay Town Planning Act and R. 27 of Bombay Town Planning Rules cannot be struck down as ultra vires Art. 14 of the Constitution on ground that the procedure for summary eviction thereunder did not confirm to the principles of natural justice. These provisions cannot be struck down as unconstitutional on th ground that there was no corrective machinery provided by way of an apple or revision to any superior authority against an adverse order passed by Local Authority acting under R. 27.

Mere absence of a corrective machinery by way appeal or revision by itself would not make the power the power under S. 54 unreasonable or arbitrary, much less would render that provision invalid.

The power conferred on the Local Authority is a quasi- judicial power which implies that the same has to be exercised after observing the principal of natural justice, tht is to be decision that the occupants are not entitled to occupy the plots in their occupants has to be arrived at after

hearing such occupations and that too by passing a speaking order. Babhubhai and Co. v. State of Gujrat. **AIR 1985 SC 613: (1985) 2 SCC 732: 1985 UJ (SC) 935: (1985) 3 SCR 614.**

-Art. 14- Bomaby Town Planning Act (27 of 1955), S. 54 –Lands reserved for constrcyion of roads and other public purposes- Liability of occupants to suyffer eviction therefrom under Final Scheme –Remedy of summary eviction was an exclusive remedy -Local Authority could not adopt normal remedy of Civil Suit- Section 54 could not be said to be vilaotive of Art. 14 on this ground. (Concerned). Babhubhai and Co. v. State of Gujrat. **AIR 1985 SC 613: (1985) 2 SCC 732: 1985 UJ (SC) 935: (1985) 3 SCR 614.**

-Art. 14-Town Planning Act (Travancore Act 4 of 1108) (as now applicable to Kerala), S. 33 read with S. 32- Validity- Acquisition of land for town planning scheme –Whether section is invalid on ground of acquisition, one more onerous than the other- See Town Planning and Housing- Town Planning Act (Travancore Act 1108), S. 33. **AIR 1980 SC 1438.**

-Art. 14-Town Planning Act (Travancore Act 4 of 1108) (as now applicable to Kerala), S. 12- Validity –Absence of time-limit for sanction by Government to draft scheme –Presence of two years' time-limit in Kerala Land Acquisition Act –Considering Specialised nature of improvement schemes absence of time-limit is not arbitrary or discriminatory. State of Kerala v. T. M. Peter. **AIR 1980 SC 1438: (1980) 3 SCC 554: 1980 UJ (SC) 530: (1980) 3 SCR 290.**

-Art. 14- Bombay Town Planning Act (27 of 1955), Ss. 53 and 67 –Do not infringe Article 14.

Under the Bombay Town Planning Act, 1955 there is no acquisition by the State Government of land needed for a town-planning scheme. When the town Planning Scheme comes into operation the land needed by a local authority vests by virtue of Section 53(a) and that vesting for purposes of the guarantee under Articles 31(2) is deemed compulsory acquisition for a public purpose. To lands which are subject 53 and 67 apply, and the compensation is determined only in the manner prescribed by the Act. The State Government can acquire the land under the Land Acquisition Act, and the local authority only under the Bombay Town Planning Act. There is no option to the local authority to resort to one or the other of the alternative methods which result in acquisition. Hence the provisions if Sections 53 and 67 are not invalid on the ground that they deny the equal protection of the laws or equality before the laws. State of Gujrat v. Shantilal Mangaldas. **AIR 1969 SC 634: (1969) 1 SCC 509: (1969) 2 SCWR 366: (1969) 2 SCJ 322.**

-Arts. 14, 19, 31- Bombay Town Planning Act (27 of 1955), Ss. 4,9, 10, 11, 12, 13- Sections are constitutionally valid.

There was enough guidance in the Town Planning Act enable the Municipal Commissioner to come to a conclusion as to whether a particular commencement certificate should be granted or not and the power exercisable under the sections was neither unanalyzed nor arbitrary: (ii) In view of the immensity of the task of the local authorities to find funds for the acquisition of lands for public purposes, a period of ten years was not too long: (iii) Nothing was done haphazardly. Suggestions and objections at all stages were carefully considered. The assistance of Committees of Experts was taken and the plan enraged only after an immense amount of labour had been bestowed on its preparation; (IV) Section 13 did not give an uncontrolled and uncanalised power to the local authority to refuse a commencement certificate arbitrarily. If the provisions of the Act were borne in mind and the rules framed thereunder complied with, there was little or no scope for the local authority acting arbitrarily under Section 13. The fact that no appeal from the decision under Section 13 was provided for, was a matter of no moment for the authority Section 13 was no less than the Municipal Commissioner himself.

Hence, sections 4, 9, 10 to 13 were constitutionality valid. Gupte K. L. v. Municipal Corporation, Graeter Bombay. **AIR 1968 SC 303: (1969) 1 SCJ 392: (1968) 1 SCR 274: 1968 Mah LJ 551.**

-Art. 14- Bombay Town Planning Act (27 of 1955), Section 32 –Planning of Town Planning Scheme – No unguided or uncontrolled power is given to authorities- Principals in applying article explained- See Town Planning and Housing- Bombay Town Planning Act (1955), S. 32. **AIR 1967 SC 1373.**

80. Cities Development Legislations.

-Art. 14- Delhi Development Authority (Disposal of Development Nazul Land) Rules (1981), R. 6(v) –Industries functioning in non- confirming areas- Allotment off plots in conforming industrial areas- Condition that applicant must hold valid municipal licence- Not arbitrary, unreasonably or irrational- Applicant possessing ad hoc licence – Not entitled to allotment. LPA 38 / 94, dt. 29-7-094 (Delhi), Reversed.

Noticed dated February 8, 1976 issued by the Delhi Development Authority in formed all concern of the decision of the DDA to the industries functioning non-confirming areas or the areas which were under acquisition for various public purposes to obtain land in the confirming industrial areas which had been developed by the DDA in different localities in Delhi in accordance with the provisions of the Master Plan. The applicants were required to make applicants on prescribed forms. Allotment of plots was refused to some applicants since they were not having licensed under Section 416 of the Delhi Municipal Cooperation Act and Rule 6(v) of the Delhi Development Authority (Disposal of Development Nazul Land) Rules, 1981.

Held that the condition imposed b the DDA for allotment of industrial plot to a person, who was having a valid licence under the DMC, Delhi Municipal Corporation Act was neither arbitrary, unreasonable nor irrational. A person who is running a trade without any valid licence under Section 416 of the DMC Act is committing an offence which is a contenting offence and he cannot be put at the same pedestal with a person who is law abiding and I having a valid licence. Otherwise it will be putting a premium on illegality. That condition of holding of valid license under the DMC Act license imposed by DDA would be legal even if the number of plots available is more than the applicants. It is not material if the notice inviting applications was silent on this aspect of the matter and the application from which was prescribed used the words “ if any” in the context of number and date of the Municipal license held by the applicant.

The parties who were not having municipal licenses on the date of their respective applications have been barred from getting an industrial plot altogether. They are, however, left to fend for themselves either by buying an industrial plot in public auction or by a private purchase. As per the policy the DDA does not want to allot the industrial plots to tem on predetermined rates they fell outside the policy made by it. In terms of this policy it is also not material unit had been working and may be much prior to the coming into force of the Nazul Rules and once these Rules, which are statutory, came into force no allotment could have been made outside and in contravention of those Rules.

Some of the applicants were granted municipal licenses under ad hoc Licensing Policy, 1982 from a retrospective date and I would appear licensed fee has also been charged from the back date. DDA has not accepted these ad hoc licenses since as per condition of its policy ther should be a valid municipal licence on the date of the application. The Indemnity Bond executed by person seeking ad hoc licenses stipulated inter alia “ that the person will not claim any alternative site in any conforming area in lieu of the grant of temporary licenses”. Delhi

Development Authority v. M/s. Ambitious Enterprises. **AIR 1997 SC 3263: 19976 AIR SCW 3323: 1997 (4) Scale 497: 1997 (6) SCC 420: 1997 (6) JT 119: 1997 (6) Supreme 305.**

-Arts. 14, 226- Capital of Punjab (Development and Regulation) Act (27 of 1952), S. 8-A- S. 8-A providing for resumption of plot is not Violative of Art. 14 –it prescribes inbuilt procedure of giving opportunity and right to adduce evidence order in appeal may be subject to review under Art. 226 within circumscribed parameters if permissible. Babu Singh Bains v. Union of India. **AIR 1997 SC 116: 1996 AIR SCW 4275: 1996 (6) SCC 565: 1996 (9) JT 371.**

-Art. 14- U.P.Urban planing and Development Act (Presi. Act 11 of 1973), Ss 13 and 15 – Doctrine of reasonable expectation – It does not confer independent right- Master Plan for certain development area- Original land used for certain area therein amended from recreational to residential –Original use restored subsequently- Claim of owners of land in area that first amendment of land use gave rise to expectation that they could by them –Not justified.

Decision of Allahabad High Court, Reversed.

Non-consideration of legitimate expectation of a person adversely affected by a decision may invalidate the decision on the ground of arbitrariness even though the legitimate expectation of that person is not an enforceable right to provide the foundation for challenged of the decision on that basis alone. In other words the plea of legitimate expectation relates to procedural fairness in decision- making and procedural fairness in decision –making and forms a part of the rule of non- arbitrariness; and it is not meant to confer an independent right enforceable by itself.

Where the land used for certain development area in which certain private colonisers owned land was changed from 'recreational' to 'residential' by the State Govt. in the Master paln for that area and then restored the original land use, i.e. recreational, the private colonisers who had submitted paln for approval could not claim that the change of user to residential gave rise to legitimate expectation that they could construct a housing colony in the land owned by them when it is seen that grant of permission to construct under S. 15 of the State Act was not automatic and the statute permitted amendment of Master Plan even after first management. Ghaziabad D.A. v. Delhi Auto and General Finance Pvt. Ltd. **AIR 1994 SC 2263: 1994 AIR SCW 2135: (1994) 4 SCC 42: 1994 (2) UJ (SC) 497: 1994 (3) JT 275.**

-Arts .14, 12- Delhi Development Act (61 of 1957), Ss.3,3 (3) (b); 57, 58 and 59- Delhi Development Authority (management and Disposal of Housing Estates) Regulations (1968), Regulations 2 (13), 59- Delhi Development Authority levying surcharge as component of disposal price of flats in certain area under certain scheme –Levy whether discriminatory- Authority not bound to offer flats income groupwise according to uniform price formula ignoring factors of price structure- price determinants basis for classifications of flats- Offering flats to Government for staff quarters at less price, if discriminatory- Regulations whether spell formula for price determination on basis of 'no profit no loss' –Delegation to Vice- Chairman to levy surcharge as component of disposal price- Delegation if valid.

The Delhi Development Authority having the trappings of a State might be covered by he expression 'other authority' in Article 12 and would certainly be precluded from according discriminatory treatment to persons offering to purchase flats in the same scheme. Those who opt to take flats in a particular incomewise area-wise scheme in which all flats came up together as one project, may form a class and an discriminatory treatment in the same class may attract Article 14. But to say that throughout its course of existence the authority would be bound to offer flats income-group- wise according to the same price formula is to expect the authority to ignore time situation, location and other relevant factors which all enter the price structure.

Premji Bhai Parmar v. Delhi Development. **AIR 1980 SC 738: (1980) 2 SCC 129: (1980) 2 SCR 704: 1979 MCC 374.**

-Art. 14-Delhi Development Act (61 of 1957), S. 3- Delhi Development Authority- While determining price of flats authority acts purely in executive capacity –State or its agents entering into contractual field- Relations are not governed by constitutional provisions- no question arises of violation of any constitutional provision including Art. 14- See Ibid, Art. 32 (2). **AIR 1980 SC 738.**

-Art. 14- Section 9 of Punjab Act 27 of 1952- Provision Violatives Art. 14- See Town Planning and Housing- Capital of Punjab (Development and Regulation) Act (1952), S. 9. **AIR 1972 SC 2587.**

-Art. 14-West Bengal Land Development and Planning Act (21 of 1948), S. 7 –Validity of –It does not contravene Art. 14 of the Constitution- Effect of At. 31- B- See Town Planning and Housing –West Bengal Land Development and planning Act (1948), S. 7. **AIR 1961 SC 16.**