(1986) 05 CAL CK 0025

Calcutta High Court

Case No: C. R. 5186 (W) of 1981

Paschimbanga Rajya Bhumijibi Sangha and Others		APPELLANT
	Vs	
State of West Bengal and Others		RESPONDENT

Date of Decision: May 19, 1986

Acts Referred:

- Constitution of India, 1950 - Article 14, 31(B), 31(C), 31A(1), 31B
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 2(f)
- West Bengal Land Reforms Act, 1955 - Section 14K, 14K(c), 2

Citation: 90 CWN 1108

Hon'ble Judges: Satish Chandra, C.J; Mookerjee, J

Bench: Division Bench

Advocate: Nath Maiti, Puspendu Bikash Sahu and Sudhakar Biswas, for the Appellant;Sadhan Kumar Gupta, Addl. Advocate Genl. and Abhas Chandra Das Gupta, for the Respondent

Judgement

Mookerjee, J.

The petitioners of these Rules have challenged, on various grounds, the virus of the West Bengal Land Holding Revenue Act, 1979 (West Bengal Act XLIV of 1979) which "provides for levy of revenue on land holdings in the State of West Bengal". The Act extends to the whole of West Bengal except the areas described in the Schedule I of the Calcutta Municipal Act, 1951. The assent of the President to the said enactment was first published in the Calcutta Gazette (Extraordinary) on 16th April, 1980. By a Notification issued under sub-section (3) of section 1 of the said Act, the West Bengal Land Holding Revenue Act, 1979 has come into force on 14th April, 1981. According to its preamble, the West Bengal Land Holding Revenue Act, 1979 had been enacted " to rationalise and improve the system of revenue on land holdings in the interest of proper implementation of comprehensive measures for land reform in the State with a view to providing for increased production and ensuring proper distribution

of material resources for social and economic welfare". For better understanding of the provisions of the Act regarding levy and assessment of revenue, it is necessary to first refer to meaning of some of the expressions used in the said Act. ''Revenue'' u/s 2(c) of the said Act means ''whatever is lawfully payable by a raiyat under the provisions of this Act in respect of his land holdings''. The terms ''land holding means ''total land of every description held by a raiyat (vide section 2 clause (g) of the said Act). The explanation to clause (g) of section 2 of the Act lays down that in the said clause (g) the expression ''raiyat includes the members of his family. The clause (f) of section 2 of the Act adopts and incorporates the definition of ''family'' given in clause (c) of section 14K of the West Bengal Land Reforms Act, 1955. In the West Bengal Land Holding Revenue Act, 1979 the expression raiyat had been used in a comprehensive sense. The said expression ''raiyat'' includes not only persons who hold under the State land for purposes of agriculture but also non-agricultural tenants under the State and also its lessess (vide clause (k) of section 2 of the said Act as substituted by the West Bengal Act XXXIII of 1981).

2. The amount of revenue payable upon a land holding under the said Act is to be assessed on the basis of the particular rateable value of the area or areas within which the said land holding would fall. The Act purports to bring about a radical change in the existing law by relating assessment and levy of land revenue to the situation of land in different agro-climatic areas, general productivity or productive potential of land held by a raiyat. The Act also seeks to bring about progression in land revenue pattern by exempting small owners of land with lesser productive potential altogether from revenue burden''. (vide Statement of Object and Reasons of the West Bengal Land Holding Revenue Bill). The scheme of the West Bengal Land Holding Revenue Act, 1979 is as follows

1. Classification of land into area or areas: The prescribed Authority who shall be appointed by the State Government is to constitute for each district or any part thereof area or areas'' comprised of such class of land or group of classes of land of special class of land as may be determined by the said Authority (vide clause (j) of section 2 of the Act).

2. Fixation of rateable value for such area: An area or a number of areas may be notified as regions. The Regional Rating Board constituted by the State Government shall determine in the prescribed manner the market value of the land in the area or areas within their regions. The Regional Rating Boards shall also assess the rateable value for the said area or areas on the basis of 10% of such market value of land determined by it. The Regional Rating Boards shall dispose of objections filed by interested persons against statement of said reteable value prepared and published by them (vide sections 4 and 5 of the Act).

3. Approval of rateable value: The rateable values fixed by the Regional Rating Boards shall be submitted to the State Rating Board. The State Rating Board may approve the same with or without modification or may require the Regional Rating

Board for review of their determination (vide section 6 of the Act).

4. Duration of rateable value: Rateable value approved by the State Rating Board shall be published in the Official Gazette and shall remain in force for five years (section 7 of the Act).

5. Levy and collection of revenue: The Assessing Authority appointed by the State Government shall calculate the amount of revenue on the total rateable value of land holdings of raiyats situated within their respective jurisdiction at the rates specified in the Schedule to the Act. The said rates have been prescribed in a graduated scale lesser amount is payable in case of land holdings having smaller rateable value the rates of revenue would be progressively higher with the increase in the amount of rateable values of land holdings. No revenue is to be levied or assessed in case the total rateable value of a land holding does not exceed five thousand rupees. Land holdings "of the State Government, Central Government and Local Authorities and Institutions which may be specified by the Government Notification have been exempted from payments of revenue under the impugned Act.

3. Every raiyat whose extent of land holding is four acres or more is required to furnish returns to his Assessing Authority. The Assessing Authority may also make best judgment assessment of revenue payable. The Act provides for change in revenue on account of alteration in relevant circumstances (vide sections 8 and 12 and 15 of the said Act). In case of default in payment of revenue the Assessing Authority may impose fine at the prescribed rate. Orders of assessment of revenue and orders imposing fine for default in payment of revenue are appeal able on the grounds laid down (vide sections 14 and 16 of the said Act). The State Government u/s 21 of the Act has power to remit wholly or in part payment of revenue or of penalty in cases of draught, flood and other natural calamities (vide section 21 of the Act). The Act overrides other laws, customs, usage, judgment, decree, award, etc. (vide Section 23 of the impugned Act).

4. We find no substance in the submission made on behalf of the petitioners that the impugned legislation was not in respect of any of the matters enumerated in List-II of the 7th Schedule of the Constitution and therefore, the West Bengal Legislature was not competent to enact the same. Levy made by the impugned Act cannot be considered to be a tax on capital value of assets within the meaning of Entry-86 of the Union List only because amount of revenue payable by a raiyat under the West Bengal Act 44 of 1979 is to be determined upon the total rateable value of land of every description held by him. In its wisdom, the West Bengal Legislature has purported to adopt the method of rateable value of lands, i.e., 10% of their market value as the basis of levy of revenue on land holdings. The tax under the impugned Act is, however, upon land, i.e. liability to pay tax arises by reason of holding directly under the State land of every description. Merely because rateable values is adopted as the mode of assessment of revenue the tax payable under the

West Bengal Act 44 of 1979 does not cease to be land revenue. In its essential nature, i.e. the impost under the Act is upon ''land''. The Entry-18 Schedule II of the 7th Schedule of the Constitution is as fo1lows:

Land, that is to say rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

It is settled law that the said Entry is not restricted to agricultural land but includes all species of land and it confers very wide powers upon the State Legislature (vide the Privy Council decision in the case of AIR 1947 72 (Privy Council) Re. Government of India Act, 1935 - Schedule VII, List - II, Entry 21).

5. In deciding the extent of the power of the West Bengal Legislature to levy and collect tax on land, reference may also be made to Entries 45 and 49 of the State List. Entry 45 gives State Legislature competence to make laws in respect of land revenue including assessment and collection of revenue, the maintenance of land records survey for revenue purposes and Record-of-rights and alienation of revenue. The State Legislature under Entry-49 has power to impose taxes on lands and buildings. In their several reported decisions the Supreme Court has indicated the basic difference in the ambits of Entry 86, List I and of Entry 49, List II. Only because annual or capital value of land is adopted for determination of tax liability, same would not be an encroachment upon Entry 86, List I (vide Sudhir Chandra Nawn Vs. Wealth-tax Officer, Calcutta and Others, , New Manek Chowk Spinning and Weaving Mills Co. Ltd. v. Municipal Corporation of the City of Ahmedabad and Ors, AIR 1967 S.C. 180 1 (1814), The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,). The impugned Act having received the assent of the President of India, it is not possible to urge that the Act is bad because it is repugnant to the provisions of any law made by the Parliament in respect of, any matter enumerated in the Concurrent List. We conclude that by pith and substance the West Bengal Land Holding Revenue Act, 1979 has provide for levy and assessment and revenue upon land and, therefore, the West Bengal Legislature was competent to enact the law.

6. Mr. Bhunia, one of the learned advocates for the petitioners submitted before us that in previous Acts yield or productivity of land had been the basis of assessment of rent and the impugned legislation has provided for determination of revenue on the basis of rateable values which are to be calculated according to the market value of lands. At the same time, Taxation laws are no exception to the provisions in Part III of the Constitution. The Court may strike down a taxing law if it violates Article 14 of the Constitution. It is, however, not for the court to decide whether the Legislature was justified but in discarding the method of assessment of revenue/rent adopted in previous legislation. It is well-settled that when there is more than one method of assessing a tax, the court would not be justified in striking down a law on the ground that the Legislature ought to have adopted another

method which in the opinion of the court is more reasonable unless the court is convinced that the method adopted in the Legislation impugned before it is capricious, fanciful or arbitrary or clearly unjust (vide Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer, , Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another,). Rateable value is a well-known method of valuation. In various other legislation particularly, in matter of imposition of municipal holding taxes, rateable value has been adopted as the basis for making assessment. Therefore, the provision in the impugned Act for assessment of revenue according to the rateable value of land holdings cannot be pronounced as capricious or arbitrary. The rateable value under the impugned Act has been reasonably fixed at 10% of the market value of land included in an area. The more pertinent question would be whether the principles and procedures laid down by the impugned Act and the Rules made thereunder for determination of market value of land and their rateable values are constitutionally valid.

7. In the matter of levy and assessment of revenue under the West Bengal Land Holding Revenue Act, area and rateable value of land are the two basic concepts and the provisions in the Act relating to them are cardinal for assessing the amounts of revenue payable for land holdings. The main thrust of the petitioner''s challenge has been against the provisions in the West Bengali Land Holding Revenue Act 1979 relating to determination of area and assessment of rateable value of an area. The petitioners have, inter alia, submitted that the provisions of the Act regarding determination of ''area'' and assessment of rateable value of land included in an area are arbitrary unreasonable and also discriminatory.

8. The petitioners have submitted that the West Bengal Land Holding Revenue Act, 1979 itself has neither classified nor has laid down the principles of policies to be adopted by the Prescribed Authority for determining an area in respect of a district or a part thereof and therefore the said Act makes excessive delegation of legislative function thereof. The clause (c) of section 2 of the Act as amended by the West Bengal Act XXXIII of 1981 defines ''area'' in the following manner area'' means such class of land or group of classes of land or special class of land comprised in a district or any part thereof which may not be contiguous as may be determined by the Prescribed Authority.

The Act does not however also contain any definition of these expressions ''class'' group of classes and special class''. Apart from section 2(c), the Act itself does not also contain any provision relating to the procedure for determination of ''area'' by the Prescribed Authority. There Ms no other provision in the West Bengal Land Holding Revenue Act for division of a district or part of a district into area or areas. Only the interpretation in clause 2(c) of the Act is not sufficient to vest the Prescribed Authority with power to determine the area or areas. Rule 6(1) of the West Bengal Land Holding Revenue Rules purports to lay down that the Prescribed Authority in

consultation with the Settlement Officer of every district shall determine the area or areas within the local limits of the district. The ordinary meaning of the expression class is a group having same common characteristics or attributes, i.e. some intelligible indicia. But the Act does not even attempt to indicate the characteristics or attributes by which lands would be grouped under one area. The impugned Act also seeks to provide for one flat rate of rateable value for all lands included within one area. Therefore, unless there is reasonable basis for determination of areas, there would be clear possibility of treating unequals as equal by assessing revenue at the same rates upon dissimilar lands [see K. T. Moopil Nair vs. State of Kerala (supra). New Manik Chowk Spinning & Weaving Mills Co. Ltd. vs. Municipal Corporation of the City of Allahabad & Anr. (supra)].

9. In order to sustain the presumption of constitutionality of an Act the court undoubtedly may take into knowledge matters of common report the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation. The Object and Reasons of the impugned statute referred to the productivity or productive potential and situation in different agro-climatic areas but the Act and the Rules do not indicate the principles to be applied in classifying a district or a part thereof into areas on the basis of productivity of situation. Therefore, the ratio of the decision in the case of Avinder Singh and Others Vs. State of Punjab and Others, and in the case of State of Mysore vs. M. L. Magado ATR 1983 SC 762 is inapplicable in the present case.

10. The respondents in the paragraph 6 of their supplementary affidavit-in-opposition affirmed by Sri Gopal Haldar, Assistant Secretary, Land and Land Revenue Department, Government of West Bengal have attempted to establish the basis upon which the Prescribed Authority is to constitute an area. The said deponent has inter alia claimed that lands of similar nature must be grouped together in an area and if an area consists of a group of classes, the classes grouped together must be such as to be more or less of the same market value. All the lands in an area may not be contiguous as contiguous lands are more often than not unlikely to be of the same class.

11. We have failed to appreciate what has been really intended to be conveyed in the above quoted passage from the affidavit on behalf of the State. If the deponent to the affidavit-in-opposition on behalf of the State intended to only state therein that lands may be classified and included in one area not on the basis of their physical proximity or geographical contiguity but according to their nature, the said assertion would be unexceptional. But we are unable to upheld the further claim that in a district or part thereof land of similar nature would always have uniform or same market value. Even in a district or a part thereof, according to their situation, size and amenities provided, values of lands of similar nature are likely to vary from place to place. Homestead plots and commercial sites in a village would certainly fetch much lower prices than in a municipal town or an industrial area. Further,

under the impugned Act there is no provision for determination of market price or productivity of lands at the stage of determination of areas by the Prescribed Authority. Therefore, at that stage the date regarding the market value would not be available and the same cannot serve as the criteria for lands grouping together lands for creation of an area in the matter claimed in the affidavit-in-opposition.

12. The deponent to the affidavit-in-opposition on behalf of the State in paragraph 6 has also referred to the provisions for determination of compensation for different classes of vested land under the West Bengal Estates Acquisition Act. In our view, such reliance upon the provisions of the West Bengal Estates Acquisition Act would be of no assistance. The West Bengal Estates Acquisition Act and the West Bengal Land Holding Revenues Act are not in pari materia. Principles for payment of compensation in a law for agrarian reforms which is protected under Article 31(B) and 31(C) of the Constitution ought not to be compared with a law for assessment of revenue which does not enjoy such constitutional immunity. Further, the West Bengal Estates Acquisition Act provided for preparation of the preliminary compensation rolls and disposal of objections with right of appeal therefrom and publication of final compensation rolls. There is no comparable provision in the West Bengal Land Holding Revenue Act for filing objection against determination of areas by the Prescribed Authority. There is no provision for appeal against such determination.

13. A proper determination of areas is an essential prerequisite for making valid assessment of rateable value of land comprised in the area. But the impugned Act does not contain any provision for making representation by persons who might be aggrieved by wrong determination of areas or arbitrary formation of an area by the Prescribed Authority. Thus even when lands of different nature with dissmilar market values are included in one area, the persons aggrieved by such erroneous formation of the area have no opportunity to make representation. When an area is comprised of dissimilar lands with divergent market value, the assessment of the rateable value of the land is bound to be unreal and arbitrary.

14. In paragraph 6 of the supplementary affidavit-in-opposition the State respondents have impliedly recognised that atleast in some cases amendment/alteration/revision of areas determined by the Prescribed Authority would be required. The deponent to the said affidavit-in-opposition in paragraph 6 thereof has inter alia admitted that no opportunity to make representation was available at this stage but has claimed that there were two ways in which such correction that might be necessary could be made. According to the said deponent, in a few ''cases'' the Regional Rating Board following the procedure for determination of market value has come across some instances in which the lands grouped together were not similar in value. On such instances being pointed out, the Prescribed Authority has amended the Notification dealing with the particular area concerned. The respondents have, however, not disclosed the full particulars of

the said instances where dissimilar lands had been included in an area. The respondents have not also produced their record to show on how many occasions the Prescribed Authority had accepted the recommendations of the Regional Rating. Board. In any view, the alleged amendments were not made in pursuance of any statututory provisions and the Prescribed Authority was under no obligation to make the said amendments.

15. We also find that there is no force in the respondent''s contention made in paragraph 6 of the affidavit-in-opposition that while disposing of a representation made by a raiyet against determination of market value, if the Regional Rating Board finds any instance of wrong prouping, the Rating Board would point out to the Prescribed Authority and the notification would be similarly amended.

16. In the above quoted passage the respondents had presumably referred to disposal of objections under clause (b) of section 5 of the West Bengal Land Holding Revenue Act, 1979. There is no provision in the three clauses of section 5 or in any other, section of the West Bengal Land Holding Revenue Act empowering the Regional Rating Board to adjudge the correctness or otherwise of the determination made by the Prescribed Authority for formation of area or areas in a district or any part thereof. The Prescribed Authority is in no way subordinate to the Regional Rating Board or the State Rating Board. The clause (b) of section 5 of the Act mentions that objections may be preferred against the statement of rateable values prepared and published by the Regional Rating Board. The scope of such objections has been limited to questioning the correctness of the assessment of the rateable value. Therefore, while disposing of an objection preferred u/s 5(b) of the Act the Regional Rating Board may not at all consider the claim of the objector that his land holding had been wrongly included in a particular area or that dissimilar lands had been included in an area. Further, even if such objections are taken a Regional Rating Board would not be bound to consider the same or to give any opportunity of hearing to the person who might be aggrieved by erroneous determination of the area. We have also mentioned that the impugned Act does not contain any provision for correction or amendment of areas once they are determined by the Prescribed Authority and are published in the gazette.

17. In paragraph 6 of their affidavit-in-opposition the respondents have attempted to justify the provisions of the Act regarding determination of areas by also claiming that classes of land were available from Record of Rights and each district has its own nomenclature to indicate different classes of land. The respondents have also relied upon the provisions of Rule 6 of the West Bengal Land Holding Revenue Rules, under sub-rule (1) of Rule 6 of the said Rules the Prescribed Authority in consultation with the Settlement Officer of every district shall determine the area or areas within the local limits of such district. The sub-rule (2) of Rule 6 provides only for communication and publication of the declaration made by the Prescribed Authority showing the areas as determined in respect of every district. The said

sub-rule (2) of Rule 6 as already stated, does not, however, provide for any opportunity to make representation against determination of areas.

18. No doubt, under sub-section (3) of section 5 of the West Bengal Land Reforms Act, while revising or preparing the records, the Revenue Officers are required to insert the particulars prescribed by Rule 23 of the West Bengal Land Reforms Rules. The clause (b) of Rule 23 is in the following terms -

The situation class and quantity of land held by each raiyat, occupant or bargadar.

19. We are not prepared to hold that the expressions class'',

group of Classes'' or special class are invariably referable to the classification made in the Records of Rights because the West Bengal Land Holding Revenue Act or the Rules made thereunder do not provide that the areas (in a district or part thereof) shall be constituted only on the basis of the classification of land entered into the Records of Rights. The West Bengal Land Reforms Act and Rules made thereunder contain ebaborate provisions for disposal of claims and objections. Secondly, the entries made in the Record of Rights raise presumption only which could be rebutted in appropriate suit or proceeding and the records could be declared as eroneous.

20. The Prescribed Authority''s determination of areas u/s 2(c) of the West Bengal Land Holding Revenue Act, 1979 has not been similarly made subject to filing of objection and disposal thereof. The Prescribed Authority thus is under no legal obligation to follow the classification of land entered in the Record of Rights. Therefore, even when the Prescribed Authority classifies lands in a way different from the classification made by the Settlement Authorities there is no. scope for filing objection. In fact, apart from the definition of ''area'' appearing in section 2(c) of the West Bengal Land Holding Revenue Act, the said Act itself does not contain any provision as to how the Prescribed Authority shall determine the areas. The Rule 6(1) of the Rules is that the Prescribed Authority may consult the District Settlement Officer but Rule 6(1) does not indicate the manner of such consultation.

21. The respondents have drawn our attention to the book Technical Rules and Instructions of the Settlement Department issued by the Director of Land Records and Surveys, West Bengal on principles approved by the West Bengal Government. In paragraph 33 at page 36 of said book it is prescribed that the main ''class'' of land according to the list prepared by the Settlement Officer at the time of cadastral survey will be entered in Column 2 of the Khatian and Column 22 of the Khatian. The List will generally consist of local, words for high arable land, lower arable land, ''homestead'', swamp'', ''un-cultivable land'', sand, road embankment, river, ''fairway temple,'' masque'' and a few others. The area is not allowed to invent new classes for entry in Column 2 of the Khatian and Column 22 of the Khatian.

22. These instruction are hardly of any assistance for upholding legality of division of a district or a part thereof into area or areas. The basis on which entries were made in column 22 of the Khatians were entirely different from the basis upon which lands are to be classified for assessment of revenue/value under the West Bengal Land Holding Revenue Act. Rateable values under the Act are to be fixed according to the market value of productivity of lands. The entires in the Records of Rights both under the West Bengal Estates Acquisition Act and under the West Bengal Land Reforms Act were made according to the user of the lands and not according to their market value. Records were also not prepared in the light of the provisions of the West Bengal Land Holding Revenue Act. Further, the above technical instructions do not also contain any guideline as to how grouping of classes of lands can be done or how lands are to be placed in a special class.

23.We concluded that the West Bengal Land Holding Revenue Act, 1979 or the Rules made thereunder do not lay down any principle or policy for determination of areas by the Prescribed Authority. No provision has been made for making representation against such determination of areas. Therefore, the Prescribed Authority has been given unlimited and uncanalised powers in the matter of formation of area in a district or part thereof, the Section 2(c) of the said Act is accordingly arbitrary and unreasonable because of such excessive delegation.

24. We may next consider the vires of the provisions contained in the impugned Act relating to determination of market value of lands included in an area and fixation of their rateable value. We have already observed that the West Bengal Legislature was fully competent to adopt ratable value as the basis for assessment of revenue upon land holdings. ''Ratable value'' u/s 5(a) of the West Bengal Land Holding Revenue Act is 10% of the market value of the land in an area. Therefore, the validity of section 5(a) of the Act cannot be questioned on the ground that ratable value for the holding has been adopted as the basis of assessment and levy of revenue.

25. But we have already held clause (c) of section 2 of the West. Bengal Land Holding Revenue Act to be invalid. The said Act has provided for assessment of ratable value on the basis of market, value of lands comprised in a particular area. In other word delimitation of areas is a condition precedent to ascertaining of notional or hypothetical market value of the lands included in the said area. In absence of valid determination of area or areas in a district or a pat thereof, there could be no assessment of market value of land or assessment of 10% thereof as ratable value of land in an area or areas. Without valid formation of area or areas the other provisions of West Bengal Land Holding Revenue Act in relation to determination of ratable value and assessment of revenue cannot be given effect to. Section 2(c) of the said Act is not severable from the remaining provisions of the,said Act relating to determination of ratable value and assessment of revenue. Only after valid determination of areas is made, the State could lawfully levy and assess revenue according to ratable value of land holdings within the areas.

26. Since the learned Advocates made lengthy submissions on the question of fixation of ratable value and assessment of revenue we briefly consider the said submissions. We have already held that the legislature was free to adopt the method of ratable value of land holdings as the basis for assessment of revenue. The interested persons have been given opportunity under clause (b) of section 5 of the Act to file objections to the assessment or rateable value. The clause (c) of section 5 of the Act requires the Regional Rating Boards to consider the objections and to hold enquiry and thereafter to finally determine the market value of lands and their rateable value. The section. 6 of the Act has provided for submission or rateable values prepared by the Regional Rating Boards shall be submitted to the State Rating Board for approval. There are also provisions for making representation to the State Rating Board by interested persons. Thus, the aforesaid sections have provided for objective determination of market values and of rateable values and also for making representation by persons interested. Therefore, aforesaid provisions of sections 5 and 6 of the Act are just and reasonable and also are in conformity with the principles of natural justice.

27. Before us the petitioners assailed the validity of Rule 5 of the West Bengal Land Holding Revenue Rules which prescribe the manner of determination of market value of land in an area or areas under clause (a) of section 5 of the act. Under clause (a) of Rule 5 of the said Rules 5% of the mouzas of a police station shall be selected at random for collection of basis sale notes form the Registration Offices. Notes of ten sales of each class of lands in the mouzas so selected shall be collected. The average rate per acre of the mouzas shall be worked out by first calculating the price per acre of each transaction separately. Then the price would be calculated by adding the price per acre and dividing the same by the total number of transactions. At the next stage, in the same method the average price per acre shall be arrived at in respect of each police station. Thereafter by applying the same method average per acre rate of an area may be arrived at on the basis of the rates of the different police stations.

28. The clauses (a) (c) of sub-rule (1) of Rule 5 of the said Rules have purported to adopt statistical method of random selection for assessment of market value of land in an area. The petitioners have objected to the application of said method of random selection for determination of market value. The respondents in paragraph 8 of their supplementary affidavit-in-opposition have claimed that for making forecast of crops etc. the Agricultural Department of the State Government had been following the said method for considerable length of time. The respondents have placed reliance upon a booklet entitled Random Numbers and Sample Survey in Agriculture''.

29. Sub-rule (3) of Rule 5 has prescribed that in case market value cannot be determined, then its rating value would be determined by making average of yield of its principal crop Rule 5(3) obviously is thus applicable only in respect of

agricultural lands. The Act however applies to all lands held under the State as raiyat or as non-agricultural tenant or as a lessee. Rule 5 however does not prescribe any third method in case the land does not yield any crop and information regarding sales of lands of similar nature are also unavailable.

30. Application of method of random sample for determination of market value of land may appear to be somewhat novel but not capricious or totally arbitrary. We are not prepared to strike down the Rule 5 of the West Bengal Land Holding Revenue Rules because said method is payable of being reasonably applied for determining the market value of lands situated within an area. The learned Advocates for the petitioners have placed reliance upon the Supreme Court decision in the case of The Collector of Kamrup Vs. Raj Chandra Sarma and Others, . In assessing compensation payable under Land Acquisition Act, the Assam High Court had relied upon a report of a Statiscal Survey on the out turn of winter rice in Assam in a particular year. The Supreme Court in the said reported decisions has inter alia observed that the report based on sample survey was not necessarily a safe guide for ascertaining market value of any particular plot acquired under the Land Acquisition Act, 1894. But this decision is not an authority for the proposition that in determining the hypothetical market value in order to assess rateable value of land, statistical method cannot be at all adopted. In view of the magnitude of the task involved adoption of statistical method could not have been perhaps avoided. The West Bengal Land Holding Revenue Act does not provide for ascertaining actual market value of each individual land holding but it purports to provide for determination of market value of land in an area on hypothetical basis. Separate determination of market value of land holding of each raiyat would have been at the most an impossible feat. Therefore the Legislature legitimately, adopted procedure for determining market value on such hypothetical basis. It is permissible to adopt notifying value for assessment purposes. Law insists that such hypothetical market value ought not to be an unreal or arbitrary (see Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others,). In considering the vires of Rule 5 of the West Bengal Land Holding Revenue Rules, we ought to also bear in our mind that the market value determined under clause (a) of section 5 read with Rule 5 have been made subject to filing of objection by interested persons. When such objections are filed the Regional Rating Board is required u/s 5(c) of the act to consider the objection and to cause necessary enquiry. We have also referred to the provisions in section 6 of the Act for making representation against the valuation made by the State Rating Board. In view of these safeguards we are not prepared to pronounce Rule 5 is ultra virus. We have already held that the provisions in the impugned Act for determination of acreas are invalid. Unless each area is comprised of lands having nearly similar market value or productive potential, fixation of notional market value of lands within that area would be unreal, capricious and arbitrary. Therefore, in the absence of valid determination of areas, it is not possible in law to determine by hypothetical market value of land in an area. Accordingly,

until in the districts or any part thereof areas are validly created, the question of ascertaining market value of lands in the areas cannot at all arise.

31. The petitioners have also submitted that the provisions of the West Bengal Land Holding Revenue Act, 1979 for clubbing together all lands held by members of a family of a raiyat are unreasonable and arbitrary and therefore invalid. We are however unable to accept the extreme submission that any legislation measure for assessment of revenue upon aggregate area of the land holdings by members of a family would be on the face of it invalid. Family has been taken as the unit in various other legislation particularly for the purpose of fixation of ceiling area of land which could be retained. We have already noticed that clause (f) of Section 2 of the West Bengal Land Holding Revenue Act has provided that family in relation to a raiyat shall have the same meaning as defined in clause (c) of Section 14K of West Bengal Land Reforms Act, 1955. According to the explanation to clause (g) of Section 2 of the said Act, the expression ''raiyat'' in the said clause shall include members of his family. The respondents have strongly relied upon the decision of the Supreme Court in the case of Sasanka Sekhar Maity and Others Vs. Union of India (UOI) and Others, which upheld inter alia, the vires of the definition of ''family'' contained in Section 14K (c) of the West Bengal Land Reforms Act and also held that clubbing together of land holding of each member of the family was valid. A. P. Sen, J. in paragraphs 35 to 40 of the judgment in the case of Sasanka Sekhar Maity v. Union of India (Supra), had observed "the definition of ''family'' as contained in Section 14 K (c) of the Act was more realistic than the definitions of the term in similar laws for imposition of ceiling on agricultural holdings enacted in other states. The definition in Section 14 K (c) was much wider and far more generous and humane. The learned Judge held that creation of such an artificial concept of ''family'' and of the provisions for clubbing together of land holdings of each member of the family are ''not violative of the second proviso to Article 31A(1) and even if so they were protected by Article 31B. It was pointed out that the provisions of Chapter II B of the West Bengal Land Reforms Act are for imposition of ceiling on agricultural holdings of raiyats and are not for the enlargement of such holdings, i.e. these put a limit on the maximum area of a holding of a raiyat. The Act adopted the individual as the unit and not the family and allowed for augmentation of his holding depending upon the normal concept of ''family''.

32. The majority decision of the Supreme Court in the case of Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, , had upheld the definition of ''family'' in Section 2(f) of the Urban Land Ceiling and Regulation Act, 1976. Krishna Iyer, J. who spoke for the majority (Tulzapurkar, J. dissenting.) in paragraph 15 of his judgment observed that ''family'' with current life-style in urban condition and was neither artificial nor arbitrary nor violative of Article 14. It is significant that the majority in Bhimji Singhji v. Union of India (supra), had approved of definition in Section 2(f) of the said Act as consisting of husband and wife and had observed that there was hardly any space for a nucleus family to live in urban conditions and to

think of large family as the natural unit as to resurrect bygone ways of life and turn the blind eye to the rapid growth of small family of man and wife. But the West Bengal Land Holding Revenue Act has adopted the comprehensive definition of the expression family'' given in the West Bengal Land Reforms Act to include not only the husband and the wife but also inter alia minor son and unmarried daughter.

33. On behalf of the petitioners it was also submitted that by virtue of the adoption in the West Bengal Land Holding Revenue Act the definition of ''family'' given in Section 14 K (c) of the West Bengal Land Reforms Act, land held by an adult unmarried daughter were liable to be included in the land held by raiyat but not the land held by his adult son. According to the petitioners, this definition was arbitrary, without any basis and therefore violative of Article 14 of the Constitution. In our view, the respondents are right in their submission that in a large majority of cases while after attaining majority an adult son assumes management of his property and enjoys their usufruct but a father continues to be in actual management of the properties standing in the name of his unmarried daughter even after she becomes suijuris Therefore, the father generally continues to be in command and enjoyment of the properties of his daughter both minor and adult. This factual distinction forms the basis of classification between an adult son and an adult unmarried daughter. While upholding the constitutional validity of clause (iii) of Section 16(3) (a) of the Indian Income Tax Act, 1922, the Madras High Court in the case of B.M. Amina Umma Vs. Income Tax Officer, Kozhikode, , had held inter alia that the basis of the classification under which the parent becomes liable for the tax of his minor child''s income but of the firm of which he was a partner and to the benefit of which the partnership the minor child was admitted was either command or actual enjoyment of the property of the minor as capital of that firm. The Madras High Court held that the impugned provision was designed to get at evasion of tax liability through the capital of the business, the capital of which business was taxed was in reality contributed by the parent himself. The Supreme Court in their decision in Balaji Vs. Income Tax Officer, Special Investigation Circle, , had approved the decision of the Madras High Court in Amina Umma''s case (supra) and also held that clauses (i) and (ii) of Section 16(3) (a) of the Income Tax Act were designed for preventing evasion of tax and the classification was reasonable. Therefore, there was nothing unreasonable in aggregating properties of the members of the family of a raiyat on the ground that the raiyat in the large majority of cases had either command or actual enjoyment,of such properties. We may also respectfully adopt the reasoning given by the Supreme Court in the case of Balaji v. Income Tax Officer (supra) and held that there was nothing illegal in imposing the immediate incidence of tax on the raiyat leaving the ultimate liability inter se among the members of his family to be settled between themselves. It may be that by reason of aggregating the annual value of the land''s owned by the members of his family, the raiyat would have to pay revenue at a higher rate. This may not be necessarily so when such aggregation does not result in putting the total annual value of the land holdings in a higher

slab. Again even if there is increased burden by reason of such aggregation it would be always open to the raiyat to pass a part of such burden to his wife and minor children.

34. We have already held as invalid the definition of the expression ''area'' in clause (c) of Section 2 of the Act and that in the absence of valid substantive provisions in the Act itself for determination of areas, the State cannot enforce the provisions of the West Bengal Land Holding Revenue Act. Therefore, we need not further lengthen our discussion on the question of assessment of revenue upon land holding by members of a family.

35. We dispose of certain other minor points raised before us. We are unable to find any substance in the submission made on behalf of the petitioners that the revenue imposed under the Act could create an excessive burden upon the raiyat. In other words, Mr. Ghosh for the respondent, has pointed out that at least in respect of smaller land holdings the burden of revenue likely to be not very large. The Act is not confiscatory and therefore it cannot be struck down on the mere ground that the rate of revenue in respect of larger holdings would be greater than the present rate of revenue or rent which is much less. The petitioners are also not right in contending that the West Bengal Land Holding Revenue Act provides for flat rate of revenue. On the other hand the Act, we have already noted, lays down a progressive rate of revenue. Holdings whose rateable value are less than Rs. 4000/- would be entirely revenue free and the rate of revenue increases with the increase in the rate of value of the holding. The impugned Act only provides for one uniform rate of market value for all lands included in one area. If areas are created on reasonable basis, no exception can be taken to fixation of such market value for all lands within the area. We accordingly make these Rules absolute in part. We declare Section 2(c) of the West Bengal Land Holding Revenue Act, 1979 to be ultra vires. We further declare that unless and until in the said Act valid provisions are made for determination of areas, revenue cannot be assessed upon total land holdings of raiyats including members of his family. After lawfully determining the different areas, the respondents may however assess and levy revenue under West Bengal Land Holding Revenue Act, 1979.
There will be no order as to costs.