FULL BENCH

Before Harbans Singh, C.J., D. K. Mahajan, Prem Chand Pandit,

Gurdev Singh and R. S. Narula, JJ.

THE STATE OF PUNJAB,—*Petitioner.*

versus

THE UNION OF INDIA,—*Respondent.*

Civil Writ No. 2291 of 1970

September 28, 1970

Wealth Tax Act (XXVII of 1957)—S. 2(m)—Finance Act (XIV of 1969)—S. 24—Constitution of India (1950)—Articles 131, 226, 245, 246 and 248, Seventh Schedule, List I entries 49, 86 and 97, List II entries 46 and 49—Tax payable on net wealth—Parliament—Whether has the power to include agricultural land for determining such net wealth—Section 24, Finance Act, 1969, amending the definition of 'net wealth' in section 2(m) of Wealth Tax Act—Whether ultra vires *the Constitution—Entry 97 of List I read with Article 248 of the Constitution—Whether empowers the Parliament to impose Wealth tax on agricultural land—Entry 86 of List I and Entry 49 of List II—Whether cover different fields—Tax on capital value of the assets as covered by Entry 86 of List I—Whether impinges upon sphere of taxation reserved for States—Inter-State dispute of the nature described in Article 131—High Court—Whether can interfere under Article 226.*

Held, per majority (Harbans Singh, C.J., Mahajan, Gurdev Singh and Narula, JJ. Pandit, J. Contra.) that the Parliament has no power to legislate so as to include among assets the agricultural land for determining net wealth on which tax is payable under the Wealth Tax Act. Hence section 24 of the Finance Act, 1969, amending the definition of 'net wealth' as contained in section 2(m) of the Wealth Tax Act, 1957, by including agricultural land in the assets for the purpose of computing net wealth is beyond the competency of the Parliament and therefore *ultra vires* the Constitution.

Held, that all the three lists of Seventh Schedule of the Constitution have to be interpreted in a manner so as not to lead to any conflict and to give full effect to all the entries. Even if there is an apparent conflict, an effort should be made to resolve the same. List I which gives power under item 97 read with Article 248, to impose a tax not mentioned in the other two Lists, contains in itself entry 86 which provides for an express prohibition or restriction on the powers of the Parliament to impose a particular type of tax. Not only the powers given to a Legislature affirmatively have to be seen but it has also to be seen that the Legislature does not contravene restriction placed on the same. Full effect, therefore, has to be given not only to the express power given to the Parliament under entry 97 of List I, but also to the clear prohibition or restriction placed in the same list. According to List I, Parliament has power to levy taxes expressly mentioned in entries 82 to 92-A. Under entry 97 of this List, Parliament

has been given power to impose taxes which are not covered in Lists II and III. This entry cannot, however, be interpreted to give power to the Parliament to levy tax, which it is specifically prohibited from so imposing,—*vide* entries 82 to 92-A. A tax which is specifically prohibited from being imposed by the Parliament cannot be imposed by it by having resort to the residuary powers conferred on it under Article 248 read with entry 97 of List I.

(Paras 15 and 16)

Held, that entry 86 of List I and entry 49 of List II cover altogether different fields and one does not entrench upon the other. So far as entry 86 of List I is concerned, that deals with a tax which, in pith and substance is on the capital value of the assets of a person and it makes no difference if one of the constituents or the only constituent of the assets happens to be land or building. The only exception expressly mentioned in the said entry 86 is that while taking into consideration the assets, agricultural land cannot be taken into account. As regards entry 49 of List II, it empowers the State Legislatures to tax directly lands and buildings, and for determining the basis of the tax the State Legislature may take either the area, annual rental value, market value or the capital value. The mere fact that the tax is calculated on the basis of annual rental value will not turn it into a tax on income and if it is based on capital value, it will not turn it into tax on capital value. Hence the tax on the capital value of the assets as covered by entry 86 of List I does not impinge upon the sphere of taxation reserved to the State Legislature so far as the tax imposed by the Parliament affects lands or buildings.

(Para 12)

Held, (per Pandit, J. Contra) that if there is a matter which is not enumerated in Lists II or III of the Schedule VII of the Constitution, then it is the Parliament alone which has the exclusive power to make any law with respect to it and that power includes the power of making any law imposing a tax not mentioned in either of those two Lists. None of the entries in these two Lists and even in the third one, deals with taxes on the capital of the assets, in the form of agricultural land of an individual, with the result that under Article 248 of the Constitution, the Parliament alone has the exclusive power to make any law with respect to it and this power will also include the power to make any law imposing a tax not mentioned in those two Lists. State Legislature has no power to impose a tax on the capital value of the assets, in the form of agricultural land, of an individual under Entry 49. It follows, therefore, that there is no prohibition in the way of the Parliament making a law imposing a tax on the capital value of the assets, in the form of agricultural land of an individual. There is no incongruity in the Parliament enjoying the power under Article 248(2), which has been withheld from it under Entry 86, List I. Entry 97, List I is, only to give effect to Article 248. So by virtue of both these provisions, the Parliament can levy wealth tax on agricultural lands. Hence section 24, Finance Act, 1969, amending definition of "net wealth" as contained in section 2(m) of Wealth Tax, 1957, is *intra vires* the Constitution and the Parliament is competent to impose the wealth tax on agricultural lands.

(Paras 35 and 40)

Held, (per Full Bench) that the High Court cannot interfere in the exercise of its extraordinary and supervising jurisdiction under Article 226 of the Constitution in an inter State dispute of the nature as described in Article 131 of the Constitution. Under Article 226, jurisdiction is exercised by a High Court and High Court certainly falls within the purview of the words "any other Court" in Article 131. When this Article 131 expressly provides that the Supreme Court shall have original jurisdiction to the exclusion of any other Court, then full effect has to be given to the wording of the Article. It is not possible to give to the words "to the exclusion of any other court" a limited meaning. (Para 4).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued declaring that the Wealth tax in so far as it imposes wealth tax on agricultural land is ultravires the Constitution of India.

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB) WITH M. R. SHARMA, S. C. SIBAL AND R. N. NARULA, ADVOCATES, for the Petitioner.

H. R. COKHALE, WITH D. N. AWASTHY AND B. S. GUPTA, Advocates, for Respondent.

JUDGMENT

HARBANS SINGH, C. J.—This order will dispose of two writ petitions, one filed by the State of Punjab (C.W. 2291 of 1970) and the other by a private person (C.W. 2673 of 1970), challenging the validity of section 24 of the Finance Act, 1969, so far as the same amended relevant provisions of Wealth Tax Act, 1957, and included the capital value of agricultural land in computing the total assets on which wealth-tax is payable.

(2) The Wealth-Tax Act of 1957 (Act No. 27 of 1957) was passed by the Parliament in September, 1957 imposing tax on the "net wealth" on the corresponding valuation date of every individual, Hindu undivided family and company. Clause (m) of section 2 defined "net wealth". Relevant part of the definition necessary for the purpose of the controversy before us is as follows:—

> " 'net wealth' means the amount by which the aggregate value computed in accordance with the provisions of this Act on all the assets, wherever located, belonging to the assessee on the valuation date ....., is in excess of the aggregate value of all the debts owed by the assessee on the valuation date ....."

The definition of "assets" given in section 2(e), as it existed prior to the amendment made by the Finance Act. 1969, was as follows:—

> " 'assets' includes property of every description, movable or immovable, but does not include—
>
> (i) agricultural land and growing crops, grass or standing trees on such land ;
>
> (ii) * * * *".

Charging section is section 3. Section 4 enumerates certain items of assets which are to be included in the 'net wealth'. Section 5 provides certain exemptions with which we are not concerned. Section 14 provides for the filing of return by a person whose net wealth on the valuation date was of such an amount as to render him liable to wealth-tax under this Act. This return is to be filed "before the thirtieth day of June of the corresponding assessment year". Section 18 provides for the penalty for failure to furnish the return without any reasonable cause and for furnishing an incorrect return. This Act, prior to the amendment made by the Finance Act, 1969, therefore, excluded altogether agricultural land from being included in the assets of a person for the purposes of the tax. Section (2) which *inter alia* excluded agricultural land from the definition of "assets" for the purpose of the Wealth-tax Act was amended by section 24 of the Finance Act, 1969, and for the assessment year commencing on the 1st of April, 1970, and for all subsequent assessment years, the exclusion of agricultural land was omitted. Thus the assets for the purpose of computing the net wealth after the aforesaid amendment came to include agricultural land as well. Exemption of agricultural land to a certain extent was provided for by making an amendment in section 5 but we are not concerned with that.

(3) The time for filing a return for the assessment year commencing on 1st of April, 1970, which return for the first time would have to include agricultural land amongst the assets of a person, was extended from time to time and the last date now fixed is 30th of September, 1970. The two writ petitions have been filed challenging the competence of the Parliament to make the amendment so as to include agricultural land in computing the net wealth of a person for the purpose of computing the tax. In both these writ petitions the validity has been challenged on two grounds. The first ground is that agricultural land is included in entry 49, List II in the Seventh Schedule of the Constitution known as the State List and such a tax could be imposed only by the State Government and not by the Union Government. In the writ petition filed by the

State of Punjab the point has specifically been taken that the Parliament by the impugned amendment has encroached upon the sphere of the State Legislatures. The second line of attack is that, in any case, even if the tax is not covered by entry 49 aforesaid, the Parliament is not authorised to impose this tax under Article 246 and 248 read with entries 86 and 97 of List I in the Seventh Schedule of the Constitution.

(4) Mr. Gokhale appearing for the Union Government took up a preliminary objection to the effect that the matter in dispute could not be raised before this Court under Article 226 and 227. The argument was that the writ petition filed by the State of Punjab raised a dispute between the State of Punjab and the Union Government regarding the power of the Parliament to enact the law imposing wealth-tax on agricultural land which is claimed by the petitioners to be exclusively within the jurisdiction of the State Legislatures and that in view of this, the dispute was exclusively triable by the Supreme Court of India by virtue of Article 131 of the Constitution. On the other hand the position taken up by the State is that matters which can be dealt with by the High Court under Article 226 are not necessarily exclusively triable by the Supreme Court under Article 131. It would be necessary to reproduce relevant part of Article 131 of the Constitution which runs thus—

> "Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—
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> (a) between the Government of India and one or more States; or
>
> (b) — — —
>
> (c) — — — ———
>
> if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :"

The dispute which is the subject matter of writ petition No. 2291 of 1970, filed by the State of Punjab is certainly a dispute between the State on the one hand and the Union Government on the other. Again it was not seriously controverted that this dispute does involve a question of law as to whether the Parliament has power under the Constitution to impose wealth-tax on agricultural land. It is also not

disputed that on the determination of this question of law will depend the legal right of the Union Government to recover the wealth-tax so imposed including the capital value of the agricultural land while computing the total assets for the purpose of the wealth-tax. The argument of the learned Advocate General for the State of Punjab was that this Article 131 opens with the words "subject to the provisions of this Constitution" and, therefore, we have to look to the other provisions of the Constitution to see if the matter in controversy can be tried by any other tribunal. In this connection he referred to a number of Articles which give jurisdiction to various other tribunals to decide disputes *inter se* between the States or between the States and the Union Government. He referred to Article 143 which powers the President to obtain the opinion of the Supreme Court on a matter that he may refer to the Supreme Court; Article 257 under which directions can be given to the States and in case of dispute the matter has to be referred to the Chief Justice of India, Article 262 which relates to the question how inter-State water disputes can be referred to some Commission, Article 280 relating to appointment of Finance Commission for the allocation of funds between the States and the Centre, Article 290 relating to adjustment of expenses, a dispute about which has to be decided by an arbitrator appointed by the Chief Justice of India and Article 363 relating to disputes arising out of certain treaties, agreements, etc. These provisions were referred to merely by way of illustrations. It has to be borne in mind that in none of these provisions the matter is dealt with by any Court. Learned Advocate-General, then referred to Article 226 under which the State has come to this Court. The argument of the learned Advocate-General was that the High Court can interfere in the exercise of this extraordinary supervisory jurisdiction under this Article only in a very limited sphere, namely, where the question raised is one of jurisdiction, as in the present case, or where there is some mistake apparent on the face of the record of a subordinate tribunal and that so long as a matter can fall under Article 226, this Court can take cognizance of the matter notwithstanding the fact that it is an inter-State dispute and of the nature as described in Article 131 because Article 131 is "subject to the provisions of this Constitution". I am afraid in advancing this argument the full effect is not being given to the words "to the exclusion of any other court". Under Article 226 jurisdiction is exercised by a High Court and High Court would certainly fall within the purview of the words "any other court". When Article 131 expressly provides that the Supreme Court shall have original jurisdiction to the exclusion of any other Court, then full effect has to be given to the wording of the Article. It is not possible to give to the

words "to the exclusion of any other court" a limited meaning whereby only the original jurisdiction of the three Presidency Courts, namely, Madras, Bombay and Calcutta, was intended to be excluded. I, therefore, feel that there is force in the preliminary objection raised by the learned counsel for the Union of India that the dispute raised in the petition filed by the State of Punjab was exclusively triable by the Supreme Court of India and consequently decline to entertain that writ petition.

(5) Two preliminary objections were also raised in respect of the petition filed by the private person, in Civil Writ No. 2673 of 1970. It was urged that the question raised in this writ petition was identically the same as raised in the writ petition filed by the State of Punjab and as the latter was exclusively triable by the Supreme Court and the matter involved being of all India importance, it was advisable that the matter should be authoritatively settled by the Supreme Court. There can be no manner of doubt that the point involved is of all India importance and it is for that reason that this special Full Bench was constituted to hear the same, yet the learned counsel for the Union Government was not able to point out any provision of law under which this Court can decline to deal with this matter and can direct the petitioner to approach the Supreme Court. Nor is there any provision under which this Court can refer this matter to the Supreme Court. Consequently, there is no force in this objection and I repel the same.

The second objection is also without any force. It was urged that no proceedings under the Wealth-Tax Act have been started against the petitioner and the various allegations made by him as to his net wealth position have to be investigated by the proper authority, etc., etc., and that the petition is, therefore, hypothetical and premature. It was conceded by the learned counsel that under section 14 an assessee, who is liable to the payment of wealth-tax is bound to file a return of his wealth, including the agricultural assets, for the assessment year beginning with 1st of April, 1970, on or before 30th September, 1970, and that a person failing to file such a return would render himself to fairly high penalties provided under section 18 of the Wealth-Tax Act. The point taken by the petitioner is that the Parliament has no power to include the agricultural land for the purpose of determining net wealth and he is threatened with serious consequences if he fails to comply with the provisions of the Act and, therefore, this petition cannot be said to be premature. This preliminary objection raised, therefore, has also to be repelled.

(6) The Advocate-General for the State of Punjab argued the case on behalf of the private person. Facts detailed in the petition so far as they relate to the particular case of the petitioner were not adverted to and it is not necessary to mention them. The point of law that arises for consideration is whether the Parliament has power to legislate so as to include amongst assets the agricultural land for determining net wealth on which tax is payable under the Wealth-Tax Act.

(7) It was agreed that Articles 245, 246 and 248 of the Constitution invest the Parliament and the State Legislatures with the power of legislation and define their spheres of legislation. Article 245 defines the extent of territorial jurisdiction of the Parliament and the State Legislatures respectively. The Legislature of a State is authorised to make laws for the whole or any part of the State and the Parliament can make laws for the whole or any part of the territory of India. Articles 246 and 248, so far as they are necessary for our purposes, are as under:—

"246. (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I, in the Seventh Schedule (in this Constitution referred to as the "Union List).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof, with respect to any of the matter enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) * * * * *".

"248. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists."

Thus these two Articles 246 and 248 read with the lists in the Seventh Schedule define the extent of the fields in which the Parliament and the State Legislatures can legislate. So far as the State Legislature is concerned, it cannot go beyond the matters enumerated in List II and so long as there is no law made by the Parliament on such a matter and to the extent to which its own law does not run counter to such law made by the Parliament, it can also legislate in respect of matters enumerated in List III. Similarly Parliament has exclusive power to legislate on matters enumerated in List I and has also power to legislate on matters detailed in List III. The Parliament, in addition, under Article 248 has power to legislate on matters not covered by Lists II and III. We are here concerned with a taxing statute. In List I, up to entry No. 81 only subjects on which the Parliament can legislate are enumerated. Entry 82 onwards deal with various taxes which the Parliament can levy. Similarly in List II entries 1 to 45 enumerate the subjects on which the State Legislatures can legislate and entry 46 onwards deal with various taxes. It would be necessary to refer to the relevant entries dealing with taxes which have some bearing on the point before us. These are as follows:—

"List I

82.—Taxes on income other than agricultural income.

86.—Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ;

87.—Estate duty in respect of property other than agricultural land.

88.—Duties in respect of succession to property other than agricultural land."

From the above it is clear that the Parliament has the exclusive power to levy taxes enumerated in the four entries mentioned above, namely, taxes on income, taxes on capital value of assets, estate duty and duty in respect of succession to all types of property, except so far as they relate to agricultural land. Thus tax on income can be levied by the Parliament, but agricultural income cannot be taxed. Similarly taxes on the capital value of all assets would be within the exclusive jurisdiction of the Parliament, but assets to be taken into consideration would be exclusive of agricultural land. Same is the case with regard to estate duty and duty in respect of succession to property.

(8) Turning to List II, we find that what is excluded from entry 82 of List I, namely, taxes on agricultural income, has been included

in entry 46 (List II) Similarly duty on agricultural land, which is excluded from the purview of the Parliament, has been put at entry 47 and the estate duty on agricultural land excluded from the purview of the Parliament by entry 87 of List I, is left to the State Legislatures by including it in entry 48. Entry 49 of List II is to the following effect:—

"Taxes on lands and buildings."

This entry consequently is not confined only to "taxes on the capital value of agricultural land" which matter is excluded in entry 86 of List I. Considerable part of the arguments addressed to us was based on the interpretation of entry 49 of List II and entry 86 of List I. Before dealing with the arguments addressed, it is necessary to refer to entry 97 of List I also, which is to the following effect:—

"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.'

It was the common case of the parties that so far as List III is concerned, no entry in it deals with the imposition of any tax.

(9) The first point urged by the learned counsel for the petitioner was that entry 49 of List I was worded in a wide manner so as to include not only a tax on the capital value of agricultural land, but also all types of taxes on land, both agricultural and non-agricultural, as well as on the buildings and that for this reason the wealth-tax on agricultural land can only be imposed by the State under entry 49 of List II and consequently cannot be imposed by the Parliament either under entry 86 because the agricultural land has been specifically excluded or under the residuary entry 97 because this tax is covered by entry 49 of List II. A number of cases were cited, but ultimately this line of argument was given up by the learned Advocate-General. The reason is also obvious because the Supreme Court in a number of decided cases has drawn a clear distinction between the nature of a tax, i.e., pith and substance of the tax and the basis or the method of assessment or the machinery to calculate the amount of tax payable. Entry 49 of List II provides for taxes on lands and 'lands' includes both agricultural and non-agricultural lands (see *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh* (1). Thus a State Government can tax agricultural land and even non-agricultural land and may adopt as the basis for calculating or determining the amount of tax :

(a) the area of the land,

(1) A.I.R. 1962 S.C. 1563.

(b) the market value of the land,

(c) the annual rental value of the land, or

(d) the capital value of the land.

In all these cases the tax will remain a tax on land and would not become a tax on income from the land where the basis of assessment is the annual rental of the land; and it would not become a tax on the capital value of the assets where the basis is taken to be the capital value of the land. Consequently, it was contended on behalf of the Union Government that the power of the State Government to impose tax on land under entry 49 of List II does, in no way, come in conflict with or entrench upon the sphere of the power of the Parliament to impose tax on the capital value of the assets under entry 86 of List I. Reference in this respect may be made to *Sudhir Chandra Nawn* v. *Wealth-tax Officer, Calcutta, and others* (2). This was a case in which inclusion of non-agricultural land in the 'net wealth' for the purpose of wealth-tax was challenged on the ground that levy of tax on the capital assets constituted by non-agricultural land came into conflict with entry 49 of List II investing the State Legislatures with the power to impose tax on land. Shah J., who delivered the judgment of the Court, after referring to entry 86 of List I and the fact that the power to levy tax on lands and buildings is reserved to the State Legislatures by entry 49 of List II, observed as follows:—

> "The tax which is imposed by entry 86, List I of the Seventh Schedule, is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee; it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and

(2) A.I.R. 1969 S.C. 59.

buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under entry 49, List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on tax papers.

* * * * *

For the purpose of levying tax under Entry 49 List II, the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping."

In paragraph 6 of the report his Lordship dealt with the question by assuming that there was some overlapping between the two entries. Reference was made to the following observations of Gwyer C. J. *In re : Central Provinces and Berar Act No. XIV of* 1938 (3) :

"* * * that a general power ought not to be so construed as to make a nullity of a particular power conferred by the same Act and operating in the same field when by reading the former in a more restricted sense effect can be given to the latter in its ordinary and natural meaning."

Shah J., then went on to observe as under :—

"Apparently an entry "taxes on lands and buildings" is a more general entry than the entry in respect of a tax on the annual value of assets of an individual or a company, and by conferring upon Parliament the power to legislate on capital value of the assets including lands and buildings, the power of the State Legislature was *pro tanto* excluded."

(10) *In Assistant Commissioner of Urban Land Tax, Madras and others, etc.*, v. *Buckingham and Carnatic Co. Ltd., etc.* (4), under Madras Urban Land Tax Act, the State Legislature of Madras imposed a tax on non-agricultural land in urban areas at a percentage of the market value. This levy was challenged on the ground that this tax came into conflict with entry 86 of List I. This was negatived

(3) (1939) F.C.R. 18 at P. 49=A.I.R. 1939 F.C. 1 at P: 10:

(4) A.I.R. 1970 S.C. 169.

both by the Madras High Court and by the Supreme Court. Bringing out the distinction between entry 86 of List I and entry 49 of List II, it was observed as follows (paragraph 5 at page 175):—

> "The tax under Entry 86 proceeds on the principle of aggregation and is imposed on totality of the value of all the assets. It is imposed on the total assets which the assessee owns and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or may not form a component of the total assets of the assessee. But Entry 49 of List II, contemplates a levy of tax on lands, and buildings or both as units. * * * * Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under Entry 49, List II, the State Legislature may adopt for determining the incidence of tax, the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not make the fields of legislation under the two entries overlapping. The two taxes are entirely different in their basic concept and fall on different subject matters."

In *Shri Prithvi Cotton Mills Ltd., etc.*, v. *Broach Borough Municipality and others* (5), also it was held that tax on lands and buildings based upon capital value falls squarely within entry 49 of List

(5) A.I.R. 1970 S.C. 192.

II, which provides for taxes on lands and buildings and reliance was placed on *Sudhir Chandra Nawn's case* (2), referred to above.

(11) *The Second Gift Tax Officer, Mangalore, etc.*, v. *D. H. Hazareth, etc.*, (6), was a case of gift tax imposed by the Parliament in which this tax so far as it affected the gifts of lands and buildings was successfully questioned before the Mysore High Court on the ground that in List II under entry 18 legislation in respect of land and under entry 49 taxes on land are exclusively reserved for the State Legislatures. Referring to the divison of the topics of the Legislatures into three broad categories, enumerated in the Lists, Hidayatullah C. J., speaking for the Court observed as under:—

> "It is not intended that every entry gives a right to levy a tax. The taxes are separately mentioned and in fact contain the whole of the power of taxation. — — — — — — — — — — — — — however, wide that entry (18), it cannot still authorise a tax not expressly mentioned. Therefore, either the pith and substance of the Gift Tax Act falls within Entry 49 of State List or it does not. — — — — — — — —
>
> The pith and substance of Gift Tax Act is to place the tax on the gift of property which may include land and buildings. It is not a tax imposed directly upon lands and buildings but is a tax upon the value of the total gifts made in an year which is above the exempted limit. There is no tax upon lands or buildings as unit of taxation. Indeed the lands and buildings are valued to find out the total amount of the gift and what is taxed is the gift. The value of the lands and buildings is only the measure of the value of the gift. A gift-tax is thus not a tax on lands and buildings as such which is a tax resting upon general ownership of lands and buildings but is a levy upon a particular use. which is transmission of title by gift."

The decision of the Mysore High Court was consequently reversed and it was held that Gift Tax Act was not covered by entry 49 of List II.

(12) The position that emerges from the above discussion is that entry 86 of List I and entry 49 of List II cover altogether different fields and one does not entrench upon the other. So far as entry 86

(6) A.I.R. 1970 S.C. 999.

of List I is concerned, that deals with a tax which, in pith and substance, is on the capital value of the assets of a person and it makes no difference if one of the constituents or the only constituent of the assets happens to be land or building. The only exception expressly mentioned in the said entry 86 is that while taking into consideration the assets, agricultural land cannot be taken into account. As regards entry 49 of List II, it empowers the State Legislatures to tax directly lands and buildings, and for determining the basis of the tax the State Legislature may take either the area, annual rental value, market value or the capital value. The mere fact that the tax is calculated on the basis of annual rental value will not turn it into a tax on income and if it is based on capital value, it will not turn it into a tax on capital value. There is, therefore, no force in the contention that the tax on the capital value of the assets as covered by entry 86 of List I, impinges on the sphere of taxation reserved to the State Legislatures so far as the tax imposed by the Parliament affects land or buildngs. In fact as stated above ultimately this matter was not seriously disputed by the learned Advocate-General.

(13) This now brings us to the real question in controversy, namely, whether the Parliament is otherwise empowered to include agricultural land as part of the assets for the purpose of calculating net wealth under the Wealth-Tax Act. Admittedly this tax can be imposed under entry 86 of List I. A number of authorities were referred to during the course of arguments in which it has been stressed by the Privy Council, the Federal Court and the Supreme Court, that powers of the Legislatures should be interpreted in a liberal manner and within the sphere of the legislative competence of a Legislature the powers to legislate are plenary. In *United Provinces* v. *Mt. Atiqa Begum and others* (7), at page 25, it was observed as follows:—

> "— — — — none of the items in the lists is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

Lord Atkin in *Gallagher* v. *Lynn* (8), at page 870 observed as follows:—

> "It is well established that you are to look at the "true nature and character of the legislation" : *Russell* v. *The Queen*

(7) A.I.R. 1941 F.C. 16.

(8) 1937 A.C. 863.

(1), (7 A.C. 839) "the pith and substance of the legislation." If, on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field."

Also see in this respect *Navnit Lal* v. *K. K. Sen, Appellate Assistant Commissioner of Income-tax, Bombay* (9), at page 1379 where it was observed as under:—

".....It is hardly necessary to emphasise that the entries in the Lists cannot be read in a narrow or restricted sense and as observed by Gwyer, C.J. in the *United Provinces* v. *Atiqa Begum* (10) "each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it." What the entries in the Lists purport to do is to confer legislative powers on the respective Legislatures in respect of areas or fields covered by the said entries; and it is an elementary rule of construction that the widest possible construction must be put upon their words....."

(14) The question of liberal interpretation, however, hardly arises in the present case. It is not the case of the Union Government that the inclusion of agricultural land amongst the assets by the Finance Act, 1969, was within the competence of the Parliament by virtue of entry 86 of List I. This entry expressly excludes imposition of a tax by including agricultural land in the assets. In fact it was urged that not only in entry 86 of List I, but also in other three entries referred to above, namely, 82, 87 and 88 relating to taxes that can be imposed by the Parliament, there is a clear common idea that Parliament is prohibited from imposing any type of tax on agricultural land. It is prohibited from imposing tax on agricultural income and from levying estate duty in respect of agricultural land, duties in respect of succession to agricultural land and tax on the capital value of agricultural land. The stand of the Union Government, however, is that under entry 97 of List I read with Article 248 Parliament is empowered to impose tax on the capital value of agricultural land or, shortly stated, can impose wealth-tax on agricultural land. The contention of Mr. Gokhale

(9) A.I.R. 1965 S.C. 1375.

(10) 1940 F.C.R. 110=A.I.R. 1941 F.C. 16.

was that the power to levy tax is given not by the entries in List I or List III but by Articles 245 to 248, relevant parts of which have already been reproduced above. He urged that under Article 246(1) Parliament has been given exclusive power to legislate in respect of matters mentioned in List I and that consequently it has power to legislate in respect of matters mentioned in entry 86. It is this Article, therefore, which confers power on the Parliament to *inter alia* impose a tax which is enumerated in entry 86. He then referred to entries 82, 87 and 88 of List I and urged that in all these three entries power to tax agricultural income or agricultural property has been excluded from the jurisdiction of the Parliament and the corresponding power has been conferred on the States by List II. He conceded that under entry 86 of List I power to include agricultural land in the assets is expressly excluded. He, however, urged that looked from the historical aspect, entry 86 is a verbatim copy of entry 55 in List I in the Seventh Schedule of the Government of India Act, 1935 and that not much emphasis should be laid on this exclusion. He vehemently argued that the mere fact that the agricultural land was expressly excluded from entry 86 of List I does not mean that the Constituent Assembly had in mind that the conditions in the country would remain so static that at no future time it would be in the interest of the country that the Parliament may include the agricultural land also in the assets which are taxable and that for this purpose the residuary entry 97 of List I read with Article 248 should be liberally construed to confer this power on the Parliament. With very great respect, I have not been able to follow this argument of convenience. Entry 55 existed in List I in Government of India Act and similarly an entry more or less corresponding to entry 49 of State List also existed in List II of the Government of India Act at No. 42 which also provided for taxes on hearths and windows in addition to taxes on lands and buildings. If the Constituent Assembly, in spite of these entries, which existed before, in its wisdom considered it fit to keep excluded agricultural land from the purview of the Parliament, it is very difficult to understand how, later on, without amending the Constitution for which ample provision is there in the Constitution, the Parliament can clothe itself with the power to impose a tax which has been expressly excluded in entry 86 of List I.

(15) Article 248 certainly confers residuary powers on the Parliament. Our Constitution being a federal constitution, certain powers have been given to the States and certain other powers to the Centre. The Constituent Assembly had to decide whether the residuary powers are to be given to the Parliament or to the States

and it decided in favour of the Parliament. The question for consideration, therefore, is whether Article 248 read with entry 97 of List I does give the Parliament power to impose tax on the capital value of assets, including agricultural land, as is the contention of the Union Government. All that Article 248 provides, so far as it concerns the matter of imposition of tax, is that where a tax is not mentioned in (a) the State List or (b) the Concurrent List, then the Parliament has the exclusive power to make any law imposing such a tax. Similarly entry 97 of List I is more or less to the same effect. The relevant part of it may be mentioned once again as follows:—

> ".....any tax not mentioned in either of those Lists (List II and List III)."

Admittedly a tax on the capital value of the agricultural land is not covered by entry 49 of List II, as discussed above, and there is no other entry in the State List dealing with such a tax. List III does not include such a tax and, therefore, wealth-tax on agricultural land is not a tax mentioned in either the State List or the Concurrent List. It was, therefore, urged on behalf of the Union Government that the Parliament enjoys exclusive power to legislate on this matter. This way of looking at the matters gives a complete go-by to the express exclusion provided in entry 86 of List I. It was not disputed that all entries in List I and as a matter of fact entries in all the three Lists have to be interpreted in a manner so as not to lead to any conflict and to give full effect to all the entries (see *In the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act*, 1938 (11) at page 5 and even if there is an apparent conflict, an effort should be made to resolve the same. Their Lordships of the Federal Court referred to *Her Majesty the Queen* v. *Burah* (12) and quoted with approval the following observations of Lord Selbourne at pages 193 and 194:—

> ".....The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. ..... The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way

(11) A.I.R. 1939 F.C. 1.
(12) 5 I.A. 178.

> in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates an express condition or restriction by which that power is limited ....., it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

Now List I which gives power under item 97 read with Article 248, to impose a tax not mentioned in the other two Lists, contains in itself entry 86 which provides for an express prohibition or restriction on the powers of the Parliament to impose a particular type of tax. As observed by Lord Selbourne, we have not only to see the powers given to a Legislature affirmatively, but also to see that the Legislature does not contravene any restriction placed on the same. Here in the present case restriction is placed not only by the same Constitution which expressly authorises imposition of taxes on matters mentioned in Lists I and III, but also in the same List as entry 97. Full effect, therefore, has to be given not only to the express power given to the Parliament under entry 97 of List I, but also to the clear prohibition or restriction placed in the same list. According to List I, Parliament has power to levy taxes expressly mentioned in entries 82 to 92-A. Under entry 97 of this List, Parliament has been given power to impose taxes which are not covered in Lists II and III. This entry cannot, however, be interpreted to give power to the Parliament to levy a tax, which it is specifically prohibited from so imposing,—*vide* entries 82 to 92-A.

(16) Another way of looking at the thing would be that various entries in List I expressly provide for certain taxes that can be levied by the Parliament. While giving this power under entry 86 of List I, the Parliament is expressly prohibited from imposing wealth-tax on agricultural land. By investing the Parliament with residuary power under entry 97, Constituent Assembly cannot be taken to have authorised the Parliament to impose tax which is so prohibited. The result of interpreting entry 97 as giving power to the Parliament even to impose a tax, which is expressly prohibited by the other entries in List I, would be to treat the prohibition as non-existing. So far as entry 86 is concerned, the effect would be that this entry would read as "taxes on the capital value of the assets, including agricultural land" or to treat the words "excluding agricultural land" as altogether non-existing. It is impossible to

interpret entry 97 in this manner. If the Constituent Assembly deliberately prohibited agricultural land from being subjected to wealth-tax by the Parliament under entry 86, List I, it could not have intended to give this power to the Parliament under entry 97 of the same list. To attribute such an intention would mean, that though the Parliament cannot impose wealth-tax under entry 86, because it is prohibited from doing so, yet it can impose the tax so prohibited, by purporting to act under the residuary entry 97. I have not the least doubt in my mind that the only proper way of reading entries 86 and 97, List I, together, to give effect to both, is to hold that in addition to the taxes specifically enumerated in List I, the Parliament can impose other taxes under entry 97, provided two conditions are satisfied :—

(1) that such a tax is not mentioned in List II or List III; and

(2) that such a tax is not prohibited under any of the entries in List I.

It cannot possibly be held that a tax which is specifically prohibited from being imposed by the Parliament, can be imposed by it by having resort to the residuary entry.

(17) Under entry 86 of List I, the Constituent Assembly clearly withdrew the power from the Parliament to impose wealth-tax on agricultural land. The idea could be to give this power to the States and include it in List II. As already discussed, though a general power to tax agricultural land is given to the States, this power of imposing wealth-tax on agricultural land has not been given. The other intention could have been to include this tax in the Concurrent List, but that also has not been done. The only other intention could have been to keep it out altogether. No other intention could reasonably be attributed to the Constituent Assembly. It could certainly not have been the idea behind this exclusion in entry 86 of List I that the same power which has been excluded in entry 86, be given back to the same authority, i.e., the Parliament itself, in that very List I in which from an earlier entry the power had been taken out. That would be telling the Parliament that the Constituent Assembly would not allow the Parliament to impose its tax under entry 86 and consequently provided for a specific exclusion, but they had no objection to the Parliament imposing that very tax, so excluded, by exercise of its power under entry 97, List I. From whatever point one may look at the matter, it is impossible to accept the contention of the Union Government that a tax which is specifically prohibited from being imposed by the

Parliament, can be imposed by it in exercise of powers conferred on it under Article 248 read with entry 97.

(18) Entry 97, List I, is obviously meant to cover cases of taxes, which possibly could not be in contemplation of the framers of the Constitution at that time but which, in view of the changing circumstances and changing concepts of the society, were considered necessary either to avoid concentration of wealth in pursuance of the Directive Principles contained in Article 39 or otherwise, but could not be included either in the taxes enumerated in List I or in the other two Lists. Such examples are : gift-tax which was upheld by the Supreme Court in *The Second Gift Tax Officer, Mangalore, etc.* v. *D. H. Hazareth, etc.* (6), referred to above, also upheld earlier by this Court in *Mt. Gaindi* v. *Union of India* (13), or the expenditure-tax which was upheld as valid by a Full Bench of the Andhra Pradesh High Court in *His Highness Prince Azam Jah* v. *Expenditure Tax Officer* (14), wherein paragraph 10 at page 92 it was observed as follows :—

> "It is clear and manifest from Entry 97 in List I that on any other matter not enumerated in List II or III including any tax not mentioned in either of those lists, the Parliament has exclusive power . . . . to make laws. The expenditure tax which is not specifically provided for in any of the Entries in the said lists falls well within the ambit or scope of Entry 97 . . . ."

The effect of the impugned legislation in its 'pith and substance' is to impose a tax on the capital value of the assets, including agricultural land. Thus in effect the words of prohibition in entry 86, namely, "excluding agricultural land" have been treated as non-existent. In doing so, the Parliament has altogether gone beyond the limitations within which it has competence to legislate.

(19) Another ground of attack taken by the petitioner was based on violation of Article 14. This was pressed only in a half-hearted manner. The contention was that the market price of the agricultural land was to be taken into consideration for the purpose of computing the net wealth under the Act. Thus the yield from the agricultural land is altogether irrelevant. For example an acre of land, which is fertile and of the best quality, whether situated near

(13) A.I.R. 1965 Pb. 65.

(14) A.I.R. 1970 A.P. 86.

a town or far away in a village, is going to produce the same quantity of grain. The basic idea of agricultural land it was urged, is that the same should be used for production of crops. If market value is to be taken the same would vary with its situation and thus a very fertile piece of land in a remote village, which produced larger quantity of grain, would be valued at a lower figure whereas a bad quality of land, which produces very little, in the vicinity of a big town would be valued at a very high price and thus a person owning land in the vicinity of a big town shall be subjected to a larger amount of tax although he can get much less income out of the same and he would thus be forced to sell the land and that this will not be in accordance with the Directive Principles embodied in Article 39 to avoid accumulation of wealth and will run counter to Article 14. The learned counsel for the petitioner, however, was not able to explain how if a person owns land in the vicinity of a city and he sells that piece of land, this fact alone would run counter to the Directive Principles embodied in Article 39 and how it could be said that there has been any discrimination and how an owner of land in a remote village can be placed in the same category as a person owning land in the vicinity of a big town. As already stated, this argument was addressed only half-heartedly and was not pressed, and it is not necessary to further consider the same.

(20) In view of the above discussion, section 24 of the Finance Act, 1969, amending the definition of 'net wealth' in the Wealth-Tax Act by including agricultural land in the assets for the purpose of computing net wealth, must be held to be beyond the competency of the Parliament and, therefore, *ultra vires* the Constitution. Civil Writ No. 2673 of 1970 is consequently accepted, rule made absolute and direction issued to the effect that the Wealth Tax Act, as amended by the Finance Act, 1969, in so far as it includes the capital value of the agricultural land for the purpose of computing 'net wealth' is *ultra vires* the Constitution of India. The petitioner will have his costs from the respondent. Counsel fee Rs. 500. Civil Writ No. 2291 of 1970 filed by the State of Punjab is dismissed for the reasons already recorded, with no order as to costs.

(21) The law point having been decided, the other writ petitions, which were added to the two writs mentioned above, viz., Civil Writs Nos. 2826, 2882 and 2888 of 1970, but were incomplete, will be put up before a Division Bench for being disposed of in accordance with law.

D. K. MAHAJAN, J.—(22) I agree with the judgment proposed to be delivered by my Lord the Chief Justice and have nothing to add.

GURDEV SINGH, J.—(23) I also agree with Hon'ble C.J.

R. S. NARULA, J.—(24) I entirely agree with my Lord the Chief Justice, and have nothing to add.

(25) These two writ petitions, one filed by the State of Punjab (Civil Writ No. 2291 of 1970) and the other by a private party, namely, Harbhajan Singh Dhillon (Civil Writ No. 2673 of 1970), challenge the constitutionality of the wealth-tax on agricultural land imposed under the Wealth-tax Act, 1957, as amended by the Finance Acts, 1969 and 1970.

PANDIT, J.—(26) I have gone through the judgment prepared by the learned Chief Justice and I agree with him that in the petition filed by the State of Punjab, the preliminary objection raised by Mr. Gokhale, learned counsel for the Union of India, should prevail. The said petition is not maintainable, inasmuch as this is a dispute between the State Government and the Union of India and, therefore, under Article 131 of the Constitution the Supreme Court has the exclusive original jurisdiction to decide the same. This Court is not competent to entertain such a petition. This writ petition, therefore, deserves to be dismissed on that ground alone.

(27) As regards the other writ petition filed by a private party, I have not been able, I say so with respect, to persuade myself to agree with the judgment of the learned Chief Justice. In my opinion, that petition also deserves to be dismissed. I am, therefore, writing my separate judgment.

(28) The controversy in this case is ultimately confined within a narrow ambit. It is common ground that Parliament alone has the power to enact legislation imposing wealth-tax on individuals and companies. It is further agreed that this power is based on Entry 86, List I of Schedule VII of the Constitution. The Wealth-tax Act, 1957, as it stood before 1st April, 1970, was strictly in accord with this Entry and the challenge to its *vires* was repelled by the Supreme Court in *Sudhir Chander Nawan* v. *The State of Assam and others* (2). The main contention of the petitioner in that case was that in view of Entry 49, List II of Schedule VII "Taxes on lands and buildings" fell within the exclusive domain of the State

Legislatures and that by virtue of that Entry all kinds of taxes on lands and buildings, including non-agricultural lands and buildings, could only be imposed by the State Legislatures. The imposition of wealth-tax on non-agricultural lands and buildings was, therefore, challenged as an encroachment on the powers of the State Legislatures. Repelling this attack, Shah, J., speaking for the Court, observed—

"The argument advanced by counsel for the petitioner is wholly misconceived. The tax which is imposed by Entry 86, List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the capital value of the assets of individuals and companies on the valuation date. The tax is not imposed on the components of the assets of the assessee; it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assessee to pay his debts and to discharge his lawful obligations have to be taken into account. In certain exceptional cases, where a person owes no debts and is under no enforceable obligation to discharge any liability out of his assets it may be possible to break up the tax which is leviable on the total assets into components and attribute a component to lands and buildings owned by an assessee. In such a case, the component out of the total tax attributable to lands and buildings may in the matter of computation bear similarity to a tax on lands and buildings levied on the capital or annual value under Entry 49, List II. But the legislative authority of Parliament is not determined by visualizing the possibility of exceptional cases of taxes under two different heads operating similarly on taxpayers. Again Entry 49, List II of the Seventh Schedule contemplates the levy of tax on lands and buildings or both as units. It is normally not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee. By legislation in exercise of power under Entry 86, List I, tax is contemplated to be levied on the value of the assets. For the purpose of levying tax under

> Entry 49, List II the State Legislature may adopt for determining the incidence of tax the annual or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment make the fields of legislation under the two entries overlapping."

In a later judgment reported as *Assistant Commissioner of Urban Land Tax, Madras and others* v. *Buckingham and Carnatic Co., Ltd,* etc. (4), the Supreme Court had again occasion to examine the apparent overlapping of Entry 86, List I and Entry 49, List II. Ramaswamy, J., who prepared the judgment, observed : "In our opinion there is no conflict between Entry 86 of List I and Entry 49 of List II. The basis of taxation in the two Entries is quite distinct." Then he proceeded to reiterate the position as visualised in the previous judgment quoted above.

(29) This very principle was enunciated in an earlier decision of the Supreme Court in *Patel Gordhandas Hargovindas and others* v. *The Municipal Commissioner, Ahmedabad and another* (15), where it was observed—

> "The importance of the distinction between the levy of a tax and the machinery of its collection has often been pointed out by judicial pronouncements of the highest authority. One of the more recent of this is *R. C. Jall* v. *Union of India* (16). I suppose the machinery of collection would include the measure of the tax; in any case, I think they are on a par. The subject-matter of taxation is obviously something other than the measure provided for the quantification of the tax."

(30) One thing that clearly emerges from the above is that State Legislatures may adopt any measure, i.e., the capital value or rental value, etc., for determining the incidence of tax on lands and buildings, but they cannot levy tax on the capital value of the assets. This is true even with regard to "taxes on the capital value of agricultural land." For, on principle what applies to non-agricultural lands and buildings, applies to agricultural land and buildings also. If the State Legislatures cannot levy a tax on the capital value of non-agricultural lands and buildings, they can also

(15) A.I.R. 1963 S.C. 1742.

(16) A.I.R. 1962 S.C. 1281.

not levy a tax on the capital value of agricultural lands and buildings as well.

(31) The whole difficulty is created by the exclusion of agricultural land from Entry 86, List I and by its non-inclusion in List II or List III, what did the Constitution makers intend thereby? Was it their intention that agricultural land was to remain exempt in any scheme of wealth taxation for all times to come? Neither side has placed before us any material in the form of objects and reasons or debates in the Constituent Assembly throwing any light on the subject. It is true that India is an agricultural country, historically and traditionally. Agricultural land has always occupied a special position in the economy of this country. Keeping in view the radical differences in agricultural conditions and land tenures in various parts of the country, agricultural land has always formed a Provincial or State subject to be dealt with by State Legislature in accordance with the local conditions prevailing within each State. Following the scheme in the Government of India Act, 1935, the Constitution makers have also placed agricultural land in most of its aspects in the State List. But a careful study of these lists shows that there is no clear cut allocation of agricultural land in *all* its aspects in favour of the States. In the instant case, the matter excluded from Entry 86 List I has not been included in the State List or the Concurrent List.

(32) I am unable to agree with the argument that the exclusion of agricultural land from Entry 86 List I means rendering the Parliament powerless to legislate on the excluded field under all conditions and in all circumstances. Nor do I agree with the suggestion that an amendment of the Constitution is required to enable Parliament to levy wealth-tax on the agricultural lands and buildings. It appears that by excluding agricultural land from Entry 86, List I, the Constitution makers were merely stressing the need for assessing the requirements of the society before including agricultural land among other assets chargeable to wealth-tax. In this vast developing age, things and ideas cannot remain static. Entry 86, List I is an exact reproduction of item No. 55 in List I of the Seventh Schedule of the Government of India Act, 1935. At that time the idea of a welfare State and the socialistic pattern of a society had not been embodied in the Constitution as an active principle determining State policies and actions. It is well known that recent legislation, like Wealth-tax Act, had been passed to carry out the directive principles embodied in our Constitution enjoining on the State to direct its policies

towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. What may be true of non-agricultural land and property at one time may by a shift in economic trends become true of agricultural land and property also in a changing society. And who can assess the needs of a changing society better than the democratically elected representatives of the people? They may decide as to when and where the evil of concentration of wealth and means of production have shifted to the common detriment and then propose a remedy therefor. That is why it appears that the power to tax the capital value of agricultural land, which was kept back from Entry 86 in List I, was kept in the reserve to be exercised by the Parliament by virtue of Article 248 (2) of the Constitution.

(33) Some authorities were cited to show that Parliament has limited powers under the Constitution. All these cases relate to the power of the pre-Constitution Legislatures in India. Till Independence Indian Legislatures were non-sovereign. Subordinate law making bodies functioned under the sovereignty of the British Parliament. Under the Constitution, however, Parliament and the State Legislatures are sovereign bodies within their respective spheres. Those cases have, therefore, no application here. The power of Parliament to enact laws is absolute in all fields allotted to it under the Constitution and not specifically allocated to the State Legislatures. Admittedly, the matter of "taxes on the capital value of assets in the form of agricultural land" is not enumerated in either of Lists II or III. It is wholly irrelevant to say that agricultural land has been excluded in Entry 86, List I. The material fact is that the State Legislatures have not been empowered to levy wealth-tax on agricultural land. Thus wherever agricultural land has been excluded from the various matters enumerated in List I, there is a corresponding inclusion of the matter so excluded in the State List (e.g. Entries 82, 87 and 88 in List I and the corresponding Entries 46, 48 and 47 relating to agricultural land in List II). Thus the matter of "taxes on the capital value of agricultural land" is not mentioned in either List II or List III. Under the circumstances, the provisions of Article 248(2) are attracted forthwith and Parliament has exclusive power of making law imposing the tax.

(34) As I look at the matter, the power or jurisdiction to legislate is derived from Articles 245 to 248 of the Constitution. The Entries in the various lists merely enumerate the matters or topics of legislation, but they do not confer any legislative power on the appropriate

Legislatures. For the exercise of legislative power, one has to look to the various Articles in the Constitution and not to the Entries in the three Lists. Under Article 245, the Parliament can make laws for the whole or any part of the territory of India, while the State Legislature can make laws for the whole or any part of the respective State. Under Article 246 (1), the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I and similarly under Article 246 (3) the State Legislature has exclusive power to make laws for the respective State in respect of any of the matters mentioned in List II. Under Article 246 (2), notwithstanding anything in clause (3) thereof, the Parliament and subject to its clause (1) the State Legislature also has power to make laws with respect to any of the matters mentioned in List III. Under Article 248, which deals with the residuary powers of legislation, the Parliament has the exclusive power to make any law with respect to any matter not enumerated in Lists II or III and such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

(35) From a reading of these three Articles, it will be apparent that if there is a matter, which is not enumerated in Lists II or III, then it is the Parliament alone which has the exclusive power to make any law with respect to it and that power includes the power of making any law imposing a tax not mentioned in either of those two Lists. I have already held above that none of the entries in these two Lists and even in the third one, deals with taxes on the capital value of the assets, in the form of agricultural land, of an individual. In the words of Article 248 of the Constitution, this particular matter is not enumerated either in the Concurrent List or the State List, with the result that under that very Article the Parliament alone has the exclusive power to make any law with respect to it and this power will also include the power to make any law imposing a tax not mentioned in those two Lists. It must be clearly understood that under the Articles, referred to above, no bar is created in the way of the Parliament making a law with respect to any matter except which is mentioned in List II, and with respect to that List, I have already held that the State Legislature has no power to impose a tax on the capital value of the assets, in the form of agricultural land, of an individual under Entry 49. It follows, therefore, that there is no prohibition in the way of the Parliament making a law imposing a tax on the capital value of the assets, in the form of agricultural land, of an individual.

(36) It has been repeatedly held that the allocation of the subjects to the Lists in the Seventh Schedule is not by way of scientific or logical definition but by way of a mere *simplex enumeration* of broad categories. Legislative power is conferred, restricted or withheld not by these Lists but by the various Articles of the Constitution appearing not only in Chapter I of part XI of the Constitution, but elsewhere also at numerous places, e.g. Articles 2, 3, 10, 11, 16 (3), 22(7), 32(3), 35, 70, 173 (C) and so on, which empower the Parliament to make laws on various other matters also, which may or may not fall in the entries enumerated in List I.

(37) It was contended that since agricultural land has been excluded from the assets mentioned in Entry 86 of List I, it acquires immunity from wealth tax. It was urged that by this exclusion the Parliament was prohibited from levying wealth-tax on agricultural assets. It was further argued that what was expressly excluded from Entry 86 could not be brought back in the form of residuary power under Entry 97, List I and that the only way Parliament can levy tax on the capital value of agricultural land is by amendment of Entry 86

(38) I am unable to agree to these contentions. They proceed on the premises that these Articles are the source of legislative power and any matter excluded from the List, if not enumerated in the other Lists, falls in a field which has been kept by the makers of the Constitution beyond the legislative power of the Parliament as well as the State Legislatures. Any such notion must be rejected as a wholly inconceivable limitation on the sovereignty of our Republic. Checks and balances are no doubt the hall mark of a Federal Constitution. But in a sovereign State like ours, there can be no question of any ultimate power vacuum, for a power which is not specifically conferred on the various legislative bodies in the State must be exercised by the authority in whom the residuary powers are vested by the Constitution.

(39) The only restrictions on the legislative and executive power of the State are those contained in the distribution of powers and the chapter relating to fundamental rights. If agricultural land was to be placed beyond the reach of the State, one would have expected some restriction either in Part III or some other Article. Thus in the case of taxes on professions, trades, callings and employments, there is a specific provision under Article 276. It clarifies as well as restricts the power of the State Legislature under Entry 60, List II. Moreover, the Article makes it clear that legislative power enumerated in these Lists emanates from Article 246.

(40) As I have said above, the legislative power of the Parliament is not derived from Article 246 alone. I see no incongruity in the Parliament enjoying the power under Article 248(2), which has been withheld from it under Entry 86, List I. Entry 97, List I is only to give effect to Article 248. So by virtue of both these provisions, the Parliament can levy the impugned tax.

(41) From what has been said above, I am of the view that the impugned legislation is good and *intra vires* and Parliament is competent to impose the tax in question.

(42) The result is that both the writ petitions fail and are dismissed, but with no order as to costs .

ORDER OF THE FULL BENCH.

(43) Civil Writ No. 2291 of 1970 filed by the State of Punjab is dismissed with no order as to costs and by majority Civil Writ No. 2673 of 1970 (*Harbhajan Singh* v. *Union of India*) is accepted, rule made absolute and direction issued to the effect that the Wealth Tax Act, as amended by the Finance Act, 1969, in so far as it includes the capital value of the agricultural land for the purpose of computing 'net wealth' is *ultra vires* the Constitution of India. The petitioner will have his costs from the respondent. Counsel fee Rs. 500.

K. S. K.

FULL BENCH

Before Harbans Singh C.J., R. S. Narula, Bal Raj Tuli, P. C. Jain, and C. G. Suri, JJ.

VIDYA DEVI,—*Petitioner.*

versus

FIRM MADAN LAL PREM KUMAR,—*Respondent.*

Civil Revision No. 92 of 1969

September 29, 1970.

East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 13 and 15—Code of Criminal Procedure (Act V of 1898)—Ss. 195(1)(b), 476 and 479A—Indian Penal Code (XLV of 1860)—S. 20—Rent Controller and Appellate Authority—Whether 'Civil Courts'—Offence of perjury committed before the Rent Controller or the Appellate Authority—Complaint for—Whether can be filed by such Controller or the Authority.