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In both the appeals reservation had been made for income to the Gram Panchayat, for extension of the abadi of the non-proprietors including Harijans, for Panchayat Ghar and for manure pits. It has also been stated that reservation had been made for village Paths. There can be no doubt, and indeed; it has not been disputed; that all these purposes would be covered by section 18(c) of the Act; read with the definition of "common purpose" given in section 2(bb) of the Act; as amended. Gosain, J. had upheld the reservation for all the purposes except the one relating to the area for providing income to the Gram Panchayat. In view of all the Full Bench decisions as also the provisions which now exist in the Act; the State appeal (L.P.A. 182 of 1960) is allowed and the order of Gosain, J. is set aside; with the result that the writ petition shall stand dismissed. There will be no order as to costs. L.P.A. 131 of 1960 is dismissed but there will be no order regarding costs.

P. D. SHARMA, J.—I agree.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

JAGAT NARAIN SETH AND OTHERS,—*Petitioners*

Versus

THE MUNICIPAL CORPORATION OF DELHI,—*Respondent.*

Civil Writ No. 267-D of 1959.

1964

May, 6th.

Delhi Municipal Corporation Act (LXVI of 1957)—S. 142—Tax on advertisements exhibited in cinema houses—Whether can be levied.

Held, that the Delhi Municipal Corporation is entitled to levy tax on advertisements exhibited on the screen in

the cinema house under section 142 of the Delhi Municipal Corporation Act, 1957, read with entry 7 in Fifth Schedule to the Act. The definition of 'public place' in section 2(42) of the Act denotes a place which is open to use and enjoyment of the public. Its actual user is wholly immaterial. A place may be open to use by the public either with permission or as of right. It cannot be said that when members of the public are allowed to use the cinema house on purchase of tickets they cease to be members of the public when they are in the cinema house. The members of the public having access to private property by lawful means do not and cannot cease to be members of the public. In a cinema house they are in a place, which, in the very nature of things, is open to their use and enjoyment, of course, lawful use and occupation, so long as they are there. A place is a public place where the public undoubtedly is.

Petition under Article 226, 265, 14 and 19 of the Constitution of India praying that Your Lordships may be pleased:—

(a) *To issue appropriate orders or directions or writs and in particular a writ in the nature of mandamus against the Respondent, the Municipal Corporation of Delhi and its agents and servants.*

(i) *directing them to forbear and desist from levying or collecting from the petitioners taxes on advertisements exhibited on the screen inside the cinema halls, and*

(ii) *directing them to forbear and desist from taking any action under the Delhi Municipal Corporation (Tax on Advertisements other than Advertisements published in Newspapers) Bye-Laws, 1959, and*

(b) *to make any further or other order as Your Lordships may deem fit and proper:*

S. T. DESAI & HARNAM DASS, ADVOCATES, for the Petitioners.

R. S. NARULA & S. S. CHADHA, ADVOCATES, for the Respondent.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This order will dispose of Civil Writ Petitions Nos. 267-D, 511-D and 512-D of 1959 and 59-D of 1960. The petitioners are different but the respondent is the same. These petitions are directed against the communication dated the 27th April, 1959, to the petitioners from the Superintendent of Licenses, Municipal Corporation of Delhi. The relevant part of this communication is as follows:—

> "This is just to remind you that the advertisement bye-laws published by the Government of India, Ministry of Home Affairs,—*vide* notification No. 40/25-58 Delhi, dated 4th March, 1959 are in force from 1st April, 1959; Under these bye-laws the display of an advertisement to public view in any manner whatsoever (including any advertisement exhibited by means of cinematograph) without the prior permission of the Commissioner is an offence which renders the advertiser liable to prosecution. You are advised to give proper notice of your intention to display and seek prior permission of the Commissioner before displaying advertisements on the screen by means of cinematograph. If no proper notice is received, it would be presumed that you are deliberately ignoring the rules and necessary action as warranted by the bye-laws shall be taken at your risk and expense. Please note."

This communication has been issued in pursuance of paragraph 6 of the bye-laws framed by the Ministry of Home Affairs by notification No. 40/25-58 Delhi dated the 4th March, 1959, entitled

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as "The Delhi Municipal Corporation (Tax on Advertisements other than advertisements published in newspapers) Bye-laws, 1959, hereinafter referred to as the Bye-laws. These bye-laws came into force on the 1st April, 1959 and were published in the *Delhi Gazette Extraordinary Part IV,* dated the 6th March, 1959.

The petitioners have moved this Court under Articles 226, 265, 14 and 19 of the Constitution for two reliefs against the Municipal Corporation, Delhi, namely,—

(i) that it forbears and desists from levying or collecting from the petitioners taxes on advertisements exhibited on the screen inside the cinema halls; and

(ii) that it forbears and desists from taking any action under the Delhi Municipal Corporation (Tax on Advertisements other than advertisements published in Newspapers) Bye-laws 1959.

The various petitioners are either the owners or partners of cinema houses which are engaged in the business of exhibiting films for public entertainment.

A large number of contentions have been set out in the petitions, but the learned counsel, for the petitioners have confined their arguments to only one contention. That contention is that the impugned levy of tax on advertisements exhibited in cinema houses does not fall within the purview of section 142 of the Delhi Municipal Corporation Act, 1957 (No. 66 of 1957), and, therefore, the petitioners are not liable to tax or any penalty for not complying with the provisions of the Bye-laws.

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Before examining this contention, it will be proper to set out the relevent provisions of the Delhi Municipal Corporation Act—hereinafter referred to as the Act. These provisions are sections 2(42), and 142 and are in these terms:—

"2. (42) 'public place' means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not;

142. (1) Every person; who erects; exhibits fixes or retains upon or over any land; building; wall; hoarding; frame post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematograph), shall pay for every advertisement which was so erected, exhibited fixed or retained or so displayed to public view a tax calculated at such rate not exceeding those specified in the Fifth Schedule as the Corporation may determine:"

For our purposes, we are not concerned with the remaining part of this section which deals with the various exceptions and explanations. None of them has any bearing on the matter before us. The only other relevant provision with which we are vitally concerned is the Fifth Schedule. The relevant part of it is set out below:

"THE FIFTH SCHEDULE.

(*See section* 152)

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S. No.	Particulars	Maximum amount of tax per annum
		Rs.
*	* * * *	*
7.	Advertisements exhibited on screens in cinema houses and other public places by means of lantern slides or similar devices—	
	(a) For a space up to 5 sq. ft.	96
	(b) For a space over 5 sq. ft. and up to 25 sq. ft.	120
	(c) For every additional 25 sq. ft. or less	120
*	* * * *	*

We now proceed to deal with the only argument raised in the case. Mr. Desai's contention is that the cinema houses exhibiting advertisements on the screen are not public places. The reason for this contention is that the cinema houses are private property. Though a licence has to be obtained for running a cinema house under the Cinematograph Act, it does not make it incumbent on the licensee to exhibit films. There is no law which makes the running of a cinema house obligatory after a licence has been obtained. This is so. It is also true that in the very nature of things the owner of the cinema house has the option to allow such persons to enter the house as he thinks desirable, but once he sells a ticket for a show to a member of the public, he cannot exclude that member from the show on the ground that the cinema house is his private property. In the latter case, the person who has purchased a ticket has obtained a licence coupled with a grant and, therefore, is entitled to see the show for which the

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ticket has been issued unless his behaviour is undesirable. This follows from the decision in *Hurst* v. *Picture Theatres Ltd.* (1). The mere fact that on purchase of tickets the members of the public have access to a cinema house will not make it a public place. In this connection reliance has been placed on *Brannan* v. *Peek* (2) and *Case* v. *Storey* (3). In *Brannan's case* Lord Goddard, C.J., was dealing with the following definition of 'public place'.

> " 'public place' shall include any public park, garden or sea-beach and any unenclosed ground to which the public for the time being have unrestricted access and shall also include every enclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at or near every public entrance there is conspicuously exhibited by the owners or persons having the control of the place a notice prohibiting betting therein."

The question in that case was whether a public house was a public place. While dealing with this question, the learned Chief Justice observed as follows:—

> "The only possible way of bringing this case within that Act would be, it seems to me to say, first, that a public house is a public place, and then to "consider whether it is a public place to which the public have unrestricted access or a restricted right of access. I think it is clear that public house is not a public place under any of the words

(1) (1915) 1 K.B.=(1914—1915) A.E.L.R. 836.
(2) (1948) 1 K.B. 68.
(3) L.R. 1869 (IV) Exchequer 319.

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used in sub-section 4 of section 1. The justices may have been misled by the fact that in common parlance licensed premises are called a public house. There is no finding here that the premises were a common inn. If they were, the case might require some further consideration because travellers have a right to be taken into an inn if there is room in the house. But a public house is only a place where a person holding a justices' licence is entitled to sell drink, and it is no more a public place than a draper's shop. The public, it may be, are invited to enter, as they may be invited to enter any other place; but that does not give a right of access, because the invitation may be withdrawn at any moment. To take an instance; if a gentleman opens his garden on a day in summer, saying 'All are welcome to come to the village fete', and sees a person coming into his garden to whom he has a particular objection, or who may not be welcome to the other people at the fete; he has a "perfect right to say" I am not going to let you 'in'. So far as I know no person has a right of entry into a public house. As a rule, of course, any person who desires refreshment is welcomed as a guest. He is invited to enter as long as the doors are open, unless the publican refuses to have him in his house, as he has a perfect right to do. The publican can close the doors of the house at any time, and the fact that the licensing justices might interfere if they thought the publican was acting

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unreasonably is neither here nor there. There is no right of entry into a public house; restricted or otherwise."

In *Case* v. *Storey* (3) the question that fell for determination was whether a hackney carriage whilst on the premises of a railway company by their leave for the accommodation of passengers by their trains, is not 'plying for hire' in any 'street or place' within the meaning of the Hackney Carriage Acts. The provision which fell for determination in that case was in these terms:—

"Section 23 imposes a penalty on the driver of any carriage without a numbered plate 'used for the purpose of standing or plying for hire as a hackney carriage in any public street or road: at any place' within five miles of the General Post Office."

Kelly, C.B.; with whom other Barons agreed; while interpreting the subsequent words of the definition 'in a public street or road', observed:—

"It is clear to me that railway stations are not either public streets or public roads. They are private property, and although it is true they are places of public resort; that does not of itself make them public places. The public only resort there upon railway business, and the railway company might exclude them at any moment they liked; except when a train was actually arriving or departing. For the proper carrying on of their business they must necessarily

open their premises, which are nevertheless private; and in no possible manner capable of being described as public streets or roads.

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The argument of the learned counsel for the petitioners; which I have set out above in detail; though very attractive on a superficial consideration of the matter, cannot bear scrutiny if the matter is examined fully in its various aspects.

It appear to us that the English cases serve no useful purpose though they do, on the face of it, seem to support the contention of the learned counsel for the petitioners. These cases were decided on the peculiar language of the definition of public place or on certain general considerations. So far as we are concerned, we have to deal with the statutory provisions; that is the definition of the public place, the charging section and the schedule. They all form part of the same enactment and are directed towards the imposition of tax on advertisements other than advertisements in newspapers.

It will appear from the definition of public place that it denotes a place which is open to use and enjoyment of the public. Its actual user is wholly immaterial. A place may be open to use of the public either with permission or as of right. The phrases 'with permission' has been used by us deliberately to denote possibly the case of a licensee; for, in law; the position of a ticketholder for a cinema show is nothing more than that of a licensee coupled with a grant. It cannot be said that when members of the public are allowed to use the cinema house on purchase of tickets, they cease to be members of the public when they are in the cinema house. The members of the public

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having access to private property by lawful means do not and cannot cease to be members of the public. In a cinema house they are in a place, which, in the very nature of things, is open to their use and enjoyment, of course, lawful use and occupation, so long as they are there. Mr. Desai' sontention that the phrase 'open to use in the definition of public place must be interpreted as open to use as of right and not open to use by permission cannot be accepted because something more has to be read into the definition for that purpose. This is not permissible in law. Moreover, there is good authority for the view that a place is a public place where the public undoubtedly is. In this connection, reference may usefully be made to the decision in *The Queen* v. *Wellard* (4). The argument placed before the learned Chief Justice Lord Coleridge was that the marsh in question in that case was not a public place and was private property. It was contended that a place is not a public place to which the public have no access as of right. This contention was not accepted by the learned Chief Justice and it will be advisable to set out the relevant part of the judgment of the learned Chief Justice; which is as follows:—

> "I am of opinion that we should not hold that it is sufficient to prove that as a matter of law, the place was one to which there was no strict legal right of access in order to make out a defence where the act is in fact committed in the presence of a number of the public, in the presence of a number, that is of persons. It is, I concede, difficult to define affirmatively what is a public place; this place; however; is clearly so.

(4) (1884) XIV Q. B.D. 63.

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The public did undoubtedly have access to it. I am by no means sure that at common law the publicity of the place itself is an essential element in the offence; and I am not inclined now to say so, it is not necessary to decide this question. It is, however, obvious that what is a public place may vary from time to time; and what we now have to consider, is, was this place at the time public a place where the public undoubtedly were."

The learned counsel for the Corporation, on the other hand, relied on *Ramkaranlal* v. *Emperor* (5) and *In re Muthuswami Iyear* (6), wherein a similar view was taken. As a matter of fact, the decision in *Ramkaranlal's case* is based on *Wellard's case.* We may, with respect; quote the observations of Pandrang Row, J. in *Muthuswami's case.* They are as follows:—

"Whether a place is public or not does not necessarily depend on the right of the public as such to go to the place though of course a place to which the public can go as of right must be a public place. The place where the public are actually in the habit of going must be deemed to be public for the purpose of the offence of affray, for instance, place like railway platforms, there are halls, and open spaces resorted to by the public for the purposes of recreation, amusement etc."

(5) A.I.R. 1916 Nag. 15.
(6) A.I.R. 1937 Mad. 286

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In any case, no doubt is left in the matter if the provisions of section 142 are read with the Schedule. The schedule is as much a part of the Act as the section and the rule of construction of statutes is that the various parts of the enactment should be so read as to harmonise with each other and not as destructive of one another. Omitting the unnecessary words; for our purposes, in section 142 of the Act; the section reads thus:

> "142. Every person, who *** exhibite*** over any **building** any advertisement or, who displays any advertisement to public view in any manner whatsoever visible from a *public street* or *public place* (including any advertisement exhibited by means "of cinematograph), shall pay for every advertisement**** exhibited** or so displayed to public view a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the Corporation may determine:"

The intention of the Legislature is clear from the use of the words in the brackets and whatever doubt may have arisen, if section 142 stood alone, has been set at rest by the clear words of the Fifth Schedule, which specifically provides for advertisements exhibited on screens in cinema house and other public places. It is stated in Maxwell on the Interpretation of Statutes, 10th Edition, page 44;—

> "Clear provisions in the Schedule to an Act cannot be limited either by the title to that Schedule, or by a section in the Act itself reciting the purposes for which the Schedule is enacted."

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This observation is based on a decision in *Inland Revenue Commissioners* v. *Gittus* (7); which was affirmed on appeal by the House of Lords in *Gittus* v. *I. R. C.* (8). The observations of Lord Sterndale M. R. in the judgment of the Court of Appeal, with regard to the rule of interpretation applicable to the combination of the Act and the Schedule may be usefully quoted:—

> "If the Act says that the schedule is to be used for a certain purpose and the heading of the part of the schedule in question shows that it is *prima facie* at any rate devoted to that purpose; then you must read the Act and the schedule as though the schedule "were operating for that purpose, and if you can satisfy the language of the section without extending is beyond that purpose you ought to do it. But if in spite of that you find in the language of the schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the schedule or by the purpose mentioned in the Act for which the schedule is *prime facie* to be used. You cannot refuse to give effect to clear words simply because *prime facie* they seem to be limited by the heading of the schedule and the definition of the purpose of the schedule contained in the Act."

In whatever perspective the matter is examined, it appears to us that there is no escape from the conclusion that the Municipal Corporation

(7) (1920) 1 K.B. 563.
(8) (1921) 2 A.C. 81.

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was well within its right to demand the tax on advertisements from the proprietors of the cinema houses; namely; the petitioners.

Before parting with the case; we must observe that the Corporation took the stand that the advertisements shown by the cinema houses in question were also visible from public streets, the reason stated being that the entrances are opened from time to time to let in the picture-goers and from a street when the door is opened, one can see the advertisements. To us it appears to be a childish attempt to bring in the case within the ambit of section 142 of the Act. If the words 'public place' were not in section 142, surely the Corporation could not succeed on the stand taken by it that under certain exceptional contingencies the advertisements can be viewed from a public street, a contingency which is not only remote but also exceedingly hypothetical. Therefore, the learned counsel for the Corporation did not seriously press this contention and we have stated it merely to be rejected outright.

For the reasons given above, these petitions fail and are dismissed; but there will be no order as to costs.

DUA, J.—In this case, we had on the conclusion of arguments, reserved orders and after my learned brother had prepared his judgment, Shri Harnam Das, learned Advocate for the petitioners, filed an application bringing to our notice a decision of the Calcutta High Court in *The Corporation of Calcutta etc.* v. *Sarat Chandra* (9), in which it is laid down that a privately owned cinema house

(9) A.I.R. 1959 Cal. 704.

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is not a public place within the maning of section 229 of the Calcutta Municipal Act (Act No. 33 of 1931) as no member of the public has a legal right of access to it, Some passages from that decision were reproduced in the petition: We did not give notice of the application to the opposite party because we felt that the decision relied on was clearly distinguishable, as is obvious from my learned brother's judgment and as I would also presently show. In the reported case, the Corporation of Calcutta had called upon the owners of Purna theatre to take out a licence for displaying advertisements on slides inside their cinema house on payment of Rs. 650 and on their refusal to do so, they were threatened with prosecution under section 541. I may here read section 229 of the Calcutta Act:—

> "229. Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement, or who displays any advertisement to public view in any manner whatsoever visible from a public street on other public place, shall pay for every advertisement which is so erected, exhibited, fixed, retained or displayed to public view a license fee calculated at such rate and in such manner and subject to such exemptions as the Corporation may prescribe by rules, with the approval of the State Government."

The distinction between this section and the provision of law which concerns us is too obvious to need any elaborate comment. Suffice it to say that cinema houses are not expressly included in the Calcutta Act as they are in item 7 of the Fifth

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Schedule before us; and the words "visible from a public street or other public place" in section 229 would clearly seem to demonstrate the distinguishing features of that case for discerning the legislative intent. The effect of coupling of words will be adverted to by me a littel later. Indeed in the scheme of Chapter XVI headed "Licence fee for Advertisements" in which section 229 occurs is far from identical or similar with the scheme of the statutory provision before us. The Calcutta decision is thus of no help to the petitioners.

Section 142 of the Delhi Municipal Corporation Act and item No. 7 in the Fifth Schedule which appear to be the charging provisions for the purpose of the present case, have, so far as relevant, been reproduced in the judgment prepared by my learned brother. These provisions may be read and construed in the background of section 113(1)(d) with which Chapter VIII headed "Taxation: Levy of Taxes" begins; for this section authorises levy of tax on advertisements other than advertisements published in the newspapers. Indeed Chapter VIII gives us the legislative scheme of taxation and sections 142 to 146 of tax authorised by section 113(1)(a). Section 142 expressly lays down that an advertisement displayed in any manner whatsoever which is visible from a public street or public place including any advertisement exhibited by means of cinematograph, is liable to a tax calculated in accordance with the fifth Schedule. Item No. 7 in the said Schedule in turn prescribes rates for advertisements exhibited on screens "in cinema houses and other public places", by means of lantern slides or similar devices. These two provisions are unambiguous and a plain reading of them together in the background of the scheme of Chapter VIII leaves little doubt

about the intention of the law-maker that advertisements exhibited on the screens in side cinema houses are liable to be taxed. The contention raised, however, is that a cinema house is not a public place as defined in section 2(42) of the Corporation Act and therefore, the levy in question is unauthorised and outside the statute.

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Now, clause (42) of section 2 of the Act undoubtedly defines "public place" to mean any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not, but the petitioners' argument seems to overlook or ignore the opening words of this section, viz., "unless the context otherwise requires". In view of these opening words, I find myself wholly unable to appreciate the elaborate arguments addressed at the bar which apparently proceed on the assumption, in my opinion; erroneous that the statutory definition is rigid and fixed admitting of no flexibility or elasticity on account of context. Once the opening words of section 2 are kept in view and given due weight; the untenability of the argument in support of the challenge becomes obvious. In the garb of interpretation, what in true effect we are being asked by the petitioners' learned counsel to do really is to delete or obliterate from item No. 7 of the Fifth Schedule the words "in cinema house" which virtually amounts to making rather than merely construing or interpreting the law. The purpose of statutory interpretation; it may be remembered; is to construe and expound the statute in accordance with the legislative intent and not to re-write it.

In its search discovering the legislative intent, the Court usually attempts to attune its mind to

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a vision comparable to that possessed by the law-makers. True it is, that in this attempt the Court may not always fully succeed in grasping the particular determinate, but it cannot be gain said that once the judicial eye is aligned in the same direction, there is greater likelihood of placing a particular determinate in its appropriate spot.

Proceeding on the lines just mentioned, the actual language in section 142 and item 7 in the Fifth Schedule gives a clear insight into the Legislature's intention that advertisements in cinema houses were expressly intended to be taxed. If the context clearly and indisputably so provides, then the opening words of section 2 equally clearly point out that the definition contained in clause (42) is not fixed, rigid and ironclad but is subservient to and controlled by the context to which it must yield, if so required. To construe this definition to be mechanically rigid and inflexible would in the context create obvious incongruities in the language in the charging provisions mentioned above. No convincing reason has been advanced for holding that the Legislature did not intend to mean what in its wisdom it has clearly and plainly said it meant.

But this apart even without attaching much importance to the opening words of section 2, the petitioners have not much of a case. The statutory definition of "public place" does not necessarily exclude cinema houses from its purview on the language used; it is essentially a matter for construction depending on the legislative intent. As has often been said, the coupling of words together shows that they are to be understood in the same general sense; to put it differently, the meaning of a word may appropriately or largely be ascertained by reference to the meaning of the adjoining

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words or words associated or related with it, for analogous words lend colour and expression to each other. Looked at from this point of view also, to accede to the petitioners' contention would lead to obvious incongruities in the language of section 142 and item 7 in the Fifth Schedule, which I cannot persuade myself to uphold. The language employed in the charging provisions mentioned above appears to me to be abundantly clear and there seems to be no rational or reasonable scope for excluding advertisements in cinema houses from their purview.

The English decisions relied upon by the petitioner's learned counsel are, in my opinion, of little or no assistance in the instant case because they all proceed on their own particular facts and they construe statutory provisions which do not bear any close analogy to the one which concerns us. Precedents, it may be pointed out, are authorities on their own facts and on the provision of law which they are called upon to construe for solving the particular problem facing the Court. Not everything contained in a judicial decision is a source of law for subsequent cases. If the facts are different and the legal provision is differently worded and designed or meant to achieve a different object, then isolated passanges from such earlier decisions instead of assisting and guiding the subsequent Court in judicial thinking on the right lines may tend to mislead it.

With these observations, I fully agree with the reasoning and the conclusion of my learned brother.

B.R.T.