CHAPTER 6

EXCLUSION OF JURISDICTION OF CIVIL COURTS

6.1 General

Rule of law presupposes the right of an aggrieved citizen to approach a Court of law for redress. However, the modern legislative tendency is to confer more and more powers on the administration and at the same time to make such powers immune from review by courts. The reasons which justified the growth of administrative tribunals themselves are said to justify the policy of excluding the jurisdiction of the judiciary. Naturally, the judiciary is seen reluctant to accept the new policy of the legislature because in a democratic state, the Court has to extend its hands of protection towards the aggrieved citizens. The reluctance is well expressed by Romer, L.J. as follows:

"The proper tribunals for the determination of legal disputes in this country are the courts and they are the only tribunals which by training and experience and assisted by properly qualified advocates, are fitted for the task".¹

¹ Lee v. Women's Guild of Great Britain (1952) 1 All. E.R. 1175, 1188.
De Smith explained the attitude of the common law judges as "An attitude which may have originally been conditioned by the solicitude of the judges for their emoluments (which were dependent largely on the fees paid by suitors) has been reinforced by traditions stemming from the battles successfully waged against the prerogative courts in the Seventeenth century and by the unique prestige that the superior judges have since earned.²

The Courts are conscious of the fact that they have the social responsibility to ensure that the administration functions according to the rule of law and that adjudicatory authorities are not let to exceed or misuse their powers under the cover of 'finality' or 'ouster' clauses.³

Much can be said vehemently in favour of the legislative policy of excluding judicial intervention. The complexities of the modern industry have forced the state to undertake various welfare measures to protect the needy lot. It is submitted that the very object of the modern welfare state is the welfare of the poor public. The rationale behind the exclusion clause is that in its race to provide with the bare necessities to the poor workers and peasants, the heavy foot of the State may fall on the rights and liberties of some people. It is evident that the legislations


made to protect the rights and interests of the weaker sections like workers\textsuperscript{4} and tenants\textsuperscript{5}, should provide with quick, cheap and effective machinery because these people may not be able to afford to the costly and snail-moving process of justice in the ordinary civil courts. Another reason for the creation of administrative tribunals and conferring exclusive jurisdiction is that in certain cases considerable expertise will be required to reach a decision as in the case of fixing fair rent, wages and bonus. The ordinary courts of law are incapable to meet an emergency or some extraordinary situation. In such circumstances the authorities are empowered to take quick preventive action under certain laws.

The methods of exclusion and the interpretation of ouster clauses have been subject of juristic thought since a long time. Under S.9 of the Civil Procedure Code, courts have general jurisdiction to try all suits of civil nature except those whose cognisance are expressly or impliedly barred. So the jurisdiction of the courts can be taken away by ordinary statutes. Several techniques are used to achieve the object. In some cases the statute may provide for the exclusion in express terms without giving room for any doubt. The term generally

\textsuperscript{4} Industrial Disputes Act, 1947, Factories Act, 1948, The Minimum Wages Act, 1948, etc.

\textsuperscript{5} Tenancy Acts like Bombay Tenancy and Agricultural Lands Act, 1949, Kerala Land Reforms Act, 1963, etc.
used for this purpose is that no order "Shall be called in question in any court of law". e.g.: S.39 of the Travancore-Cochin Nurses and Midwives Act, 1953, reads "No act done in the exercise of any power conferred by or under this Act on the Government, the council or the Registrar shall be questioned in any civil Court". S.12 of the Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 reads: "No order of the Government or the authorised officer under this Act shall be liable to be questioned in any court of law". Another variation found in certain statutes is that the "order shall be final and shall not be called in question in any court of law". S.17(2) of Industrial Disputes Act, 1947, provides: "Subject to provisions of section 17-A, the award published under sub section (1) shall be final and shall not be called in question in any manner whatsoever". S.28 of the Thiruppuvaram payment (Aboliten) Act, 1969 reads: "Any order passed by any officer or authority or any decision of the Sub-Judges, Court or the District Court under this Act in respect of matters to be determined for the purposes of this Act, shall, subject to repeal or revision provided under this Act, be final".

Another method is that the statute will provide that the Courts will not have jurisdiction to entertain any suit with regard to a subject which is exclusively left to a tribunal. S.125(1) of Kerala Land Reforms Act, 1963 reads: "No civil court shall have jurisdiction to settle, decide or deal with any
question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Land tribunal or the appellate authority or the Land Board or the Taluk Land Board or the Government or an officer of the Government. An usual method of exclusion which has become a common place among draftsman is by conferring power which is to be exercised on the subjective satisfaction of an authority. In such cases the Court can see only whether there was some material on which the authority has based its satisfaction. Apart from the express provisions of exclusion a statute may resort to indirect method like prescription of a period of limitation for review. The most extreme type of exclusion of civil court's jurisdiction is seen when the legislature creates what is called the Lord Eshers category of tribunal. This type of tribunal is vested with jurisdiction to decide the jurisdictional question as well as the subject matter of decision. Such cases are seen in legislations dealing with land

6. **G.S.Parulekar V. Maharashtra**, A.I.R. (1966) S.C.1404. In the area of subjective satisfaction it is the law that the courts are precluded from seeing whether a reasonable man would have been so satisfied on the basis of such materials. Another ground of challenge in such cases is male fide action.

7. S.29(4) of the Thiruppuvaram Payment (Abolition) Act, 1969 reads: "No suit, prosecution or other legal proceedings shall be instituted after the expiry of six months from the date of the act complained of".

reforms and tenancy conferring permanent rights of tenancy on cultivating tenants. Here the legislations confer power to decide the question whether an Applicant is a tenant or not and also the power to adjudicate questions of fair rent or fixity of tenure. This has the effect of excluding jurisdiction of a civil court exercising even supervisory powers on jurisdictional grounds also. The legislation in order to avoid indirect decisions by civil courts invariably provide for reference of such questions to statutory authorities whenever any such questions arise in regular civil proceedings. In S.125(3) Kerala Land Reforms Act, 1963, a probable exception found by the Court is a suit for injunction to protect present possession of the Plaintiff. It has been held that in such a case a reference to tribunal was not called for as a court was not concerned with the possessory title of the plaintiff. The courts in India have given due reference to such legislative device. Ordinarily the civil court has jurisdiction to entertain all suits for adjudication of the rights and disputes under S.9 of the C.P.C. and exclusion of the jurisdiction of the civil court is not to be inferred easily. Where there is an express bar of the jurisdiction of the court an examination of the scheme of the particular Act to find out the adequacy or the sufficiency of the remedies provided is not relevant. However, where no expression of exclusion has been made, an examination of the scope of remedies and scheme of

the particular Act to find out the intention of the Legislature becomes necessary. In such types of cases it is necessary to see as to whether the statute creates a special right or a liability and provides for the determination of the rights or the liabilities and whether it lays down that all questions about such rights and liabilities shall be determined by the Tribunal constituted under Act and whether remedy normally associated with actions in civil Courts are prescribed by such statute.

In Gundaji Satwaji Shinde V. Ramachandra Bhhaji Joshi the facts show that the Plaintiff filed a suit for specific performance of a contract for sale of immovable property comprising 45 acres of agricultural land. The Defendant contended that under the Bombay Tenancy and Agricultural Lands Act, 1948 agricultural land could be transferred only to an agriculturist and that Plaintiff was not an agriculturist within the meaning of the Act. It was contended that the question whether a person was an agriculturist or not could be decided only by the statutory authorities and if any such question arose in a suit the matter had to be referred to the statutory authorities, for decision. The Supreme Court upheld the contention. In Alavi V. Radha Varasyaramma, the High

Court of Kerala took the view that if a Civil Court decided the matter without objection by the parties the decision was valid. According to Subramoniam Poti, J. the procedure of reference to the Land Tribunal, contemplated under S.125(3) was a matter of procedure which did not take away the inherent jurisdiction of Civil Court to decide the Suit finally between the parties. The view that the reference contemplated in S.125(3) is only a matter of procedure, it is submitted, cannot be accepted. From the Scheme of the Act and the words of the statute, it is evident that the matter of reference to the tribunal is one going to jurisdiction and not a matter of procedure.13 The view of the learned Judge only shows the reluctance of judiciary to accord full effect to the legislative intention in such cases of exclusion.

The Courts are very jealous about privative clauses. They interpret such clauses, as far as possible, in favour of maintaining jurisdiction. "It is settled law that the exclusion of jurisdiction of the Civil Courts is not to be readily inferred, but that exclusion must either be explicitly expressed or clearly implied".14

All statutes and orders gain legality from the constitution. The jurisdiction of a Civil Court to try civil cases is granted by

statute and hence can be excluded by a statutory provision. But the jurisdiction of the High Courts to issue writs under Art. 226 and the Supreme Court to hear special leave appeals under Art. 136 are conferred by the Constitution and hence incapable of exclusion by ordinary legislation. In *Custodian of Evacuee property, Punjab v. Jafram Beegum* it was observed that a distinction had to be made between jurisdiction on the High Court under Article 226 and jurisdiction of Civil Courts for the purpose of entertaining matters which are barred by some statutory provision. The Court observed: "Whatever may be the interpretation of Ss.28 and 46 to which we shall address ourselves presently, the jurisdiction of the High Court under Art.226 of the Constitution is not and cannot be affected thereby because that was a power conferred on the High Court under the Constitution. S.9 of the Code of Civil Procedure gives jurisdiction to the Civil Courts to try suits of a Civil nature unless it is barred expressly or impliedly. S.9 makes it clear

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17. S.9 reads: "The courts shall (subject to the provision herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred". Explanation - A suit in which the right to property or to an office is contested in a suit of civil nature, notwithstanding that such right may depend entirely on decision of questions as to religious rites or ceremonies.
that the remedy can be shut out, by providing so expressly or impliedly.

Here a distinction between a civil suit to enforce a statutory right or liability and a suit challenging the legality of administrative action is to be maintained. A civil suit may ordinarily lie if the right flows from a statute and if the statute does not exclude such jurisdiction. The answer is not so simple as it appears to be presumed by the draftsman of S.9. The answer seems to be that since the statute provides for a remedy through some other body the right of civil suit is excluded. The question here is, can he opt the remedy available through an ordinary civil court. If the answer is in the affirmative what are the circumstances in which the court will assume jurisdiction?

The traditional view followed by the Courts was that it will not entertain a suit if the relevant statute provided an effective remedy. In *Wolverhampton New Water Works Co.* v. *Hawkesford*18, Willes, J. formulated the principle thus: There are three classes of cases in which liability may be established by statutes, (1) there is that class where there is a liability existing at common law, which is only remedied by the statute with a special form of remedy: thus unless the statute contains words

18. (1859) 27 L.J.C.P. 242, 246.
expressly excluding the common law remedy, the Plaintiff has his election of proceedings either under the statute or at common law; (2) then there is a second class which consists of those cases in which a statute has created a liability, but has given no special remedy for it; thus the party may adopt an action of debt or other remedy at common law to enforce it; (3) the third class is where a statute creates a liability not existing at common law, and gives also a particular remedy for enforcing. With respect to that class it has always been held that the party must adopt the form of remedy given by the statute. 19

In the first category, the aggrieved person has an option. He may choose the remedy under the statute or that one available in the ordinary court of law. This case calls for express exclusion of jurisdiction. The second category offers no difficulty as the only remedy open to the party is a civil suit. The third category deals with new rights and liabilities hitherto unknown to the legal system and there the right or liability has to be enforced through statutory remedies alone. This case alone contemplates implied exclusion of the jurisdiction of civil courts.

The leading decision, in this area is Secretary of State V Mask and Co., 20. The Collector of Customs had wrongly assessed the Respondent's goods (boiled betal nuts) and imposed

19. Ibid at P.356.
tariff at a higher rate. The Respondent appealed against the order of the Government but it was dismissed. Hence the suit was filed claiming recovery of the excess amount paid. In effect, the suit was for a redecision of the assessment. That is to say that the Court was asked to ignore the decision by the statutory authority, decide the matter afresh and to order refund of any excess of amount realised. The Appellant contended that the suit was hit by S.18821 of the Sea Customs Act, which excluded civil court's jurisdiction. The Privy Council dismissed the suit following the traditional formulation in the Wolverhampton22 case. The Privy Council held that the case fell within the ambit of the third category. Lord Thankerton observed that SS.188 and 191 provided a precise self-contained code of appeal in regard to the obligations which were created by the statute itself.

Lord Thankerton observed:

"It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure".23

21. S.188 of the sea Customs Act, 1878 provided: Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

22. Supra n.20.

23. Ibid at 110.
The observation it is submitted is fully correct and states the law in its correct perspective. So the law is that the enforcement of a right or liability under a statute can be done only under the statute, but the legality of the order namely, that the order was passed with jurisdiction by the authority is always liable to be examined by a civil court. According to Lord Tenterden C.J., "Where an act creates an obligation and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner".

The law correctly stated in *Mask and Co.*, case was obfuscated by the Privy Council in *Raleigh Investment Co. Ltd. v. Governor General in Council*. The Suit was for refund of income-tax on the ground that a provision of Income Tax Act was ultra vires of the Central Legislature. S.67 of the Income Tax Act had barred civil suits to set aside or modify an assessment once passed under the Act. The Plaintiff was not


26. S.67 read: "No suit shall be brought in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other proceeding shall be against any officer of the Crown for anything in good faith done, or inteded to be done, under the Act".
attempting to have his liability to pay income-tax redetermined by a Court of law. This was certainly a case contemplated by Lord Thankerton in *Mask and Co.*, cases. That is because a suit was always available to an aggrieved party to challenge the constitutional validity of a statute. So here the question was whether the statute can exclude it by providing a remedy of administrative appeal. The Privy Council observed: "...the Court should ascertain whether the Act provides a machinery which enables an assessee effectively to raise the question whether a particular provision is ultra vires or not".27 It was held that the Act provided such an effective machinery to raise the vires of a provision of the Act. Further, it was held that the circumstance that the assessing officer had taken into account an ultra vires provision was immaterial in determining whether the assessment was one "made under the Act".

With great respect to the Hon'ble Supreme Court in the above case it has to be said that the view that the issue of constitutionality of a statute could be raised before a statutory authority (a creature of the same statute) and effectively decided seems to be incorrect. Thus the rule of exclusion was extended to the extreme limits. The Judicial Committee showed overenthusiasm to extend the exclusion principle to the extreme limits. It was the result of its eagerness to refuse the opening of

27. A.I.R. (1947) P.C. 78 at 80
an assessment made by the assessment authority. The stand was that reopening of an assessment was allowed in no circumstance. The following observation of the Judicial Committee reveals its reluctance even in a case of such grave challenge. It observed:

In form the relief claimed does not profess to modify or set aside the assessment. In substance it does, for repayment of part of the sum due by virtue of the notice of demand could not be ordered so long as the assessment stood. Further the claim for the declaration cannot be rationally regarded as having any relevance except as leading up to the claim for repayment and the claim for an injunction is merely verbiage.28

It means that if the assessee was very particular about getting the statutory provision set aside he could have filed a suit for the purpose. But the claim for refund of the tax already paid would have necessitated the Court of law to quantify the tax again and fix the amount to be returned to the Plaintiff. This latter part according to Judicial Committee, was not within the jurisdiction of the Court. The Privy Council held that the reliance on an ultra vires provision did not make the order a nullity like an order of a Court lacking jurisdiction, but only a mistake of law. If the above situation is classified as a

jurisdictional error, declaration could have been given. For an error of law no declaration will lie. Hence the Judicial Committee classified it as an error of law.

The Courts follow a stringent view with regard to cases where reconsideration of an assessment made by a competent authority is claimed as a relief. Thus the general principle seems to be that a Court should not be asked to reopen assessment made by the proper authorities and act as an appellate forum. The only jurisdiction exercised by them is a kind of supervision over the administrative tribunals. The formulation by Wills, J. in *Wolverhempson* case is always to be kept in mind before a Court of Law embarks upon to make a reassessment or a reddecision of a matter exclusively committed to the administrative authority. The formulation of two grounds of attack of an administrative action in *Mask & Co.*, was made in accordance with this view. There the Privy Council observed, an attack can be successfully made where:

1. The authority has not acted in confirmity with the provisions of the Act or;

2. The authority has not followed the judicial procedure. A probable third ground that the statute itself or a part thereof was unconstitutional, has to be included though the Privy Council did not pay heed to such a challenge in *Raleigh's* case.
The Supreme Court of India, has followed these, In Firm Illuri Subbaya Chetty V. Andhra Pradesh\textsuperscript{29}. The question before the Supreme Court was whether the suit instituted by the Appellants for recovery of a sum from the respondent on the ground that the amount was illegally recovered from them by way of sales-tax was maintainable. The appellant had filed a return before the assessing authority and assessment had been made and tax had been collected. Then the appellant challenged the assessment on the ground that the tax was leviable only on purchases and the assessment order had levied tax in respect of sales and hence illegal. The Respondent urged that the suit was incompetent having regard to the provisions of S.18 A which ousted the jurisdiction of civil courts and that the transaction was included as sales by the Appellant in the return. In effect the plea was for a redcision of the quantum of tax because if the Court had to order that certain amount was to be repaid to the assessee in accordance with his plea, the court had to decide the question afresh. It follows that where the suit is to recover the amount already paid, it is a plea to redcede in disguise.

The Supreme Court held that the expression "any assessment made under the Act" would cover all assessments whether correct or not. It was observed:

\textsuperscript{29} A.I.R. (1964) S.C.322.
It is the activity of the assessing officer, acting as such officer which is intended to be protected and as soon as it shows that exercising his jurisdiction and authority under this Act, an assessing officer has made an order of assessment that clearly falls within the scope of S.18A.30

The fact that the order passed by the assessing authority may in fact be incorrect or wrong does not affect his jurisdiction. It was further held;

Non-compliance with the provisions of the statute... be non-compliance with such fundamental provision of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction. Similarly, if an appropriate authority has acted in violation of the fundamental principles of judicial procedure that may tend to make the proceedings illegal and void.31 Then only if infirmities go to the root of the order and make it invalid as one without jurisdiction the order will be one not passed under the Act. The Court in the instant case did not consider the question whether the plea raised by the Appellant would amount to non-compliance of the "fundamental provisions" of the Act. So also the addition of the words "fundamental" with the "provisions"

31. Ibid at 326.
and "judicial procedure" does not make much difference because it did not make the terms more clear or definite. It may be submitted that the Court classified the challenge in the present case only as an "erroneous decision".

Then came the decision in Provincial Government of Madras v. L. S. Basappa. There Basappa alleged that sales tax was collected from him in respect of sales which took place outside the State and claimed a declaration that the levy was illegal and without jurisdiction. The Defendant contended that the suit was not maintainable because the orders passed were final under S.11(4) of the Sales Tax Act. The Court held that Subbayya's case did not apply because the suit was filed before inserting S.18-A which ousted the jurisdiction of the Civil Courts in matters coming under the Act. The Court held that jurisdiction of the Civil Court was still there unless the statute expressly or by necessary implication provided for the contrary. The finality conferred upon orders of assessment was a finality for the purposes of the Act. "It did not make valid an action which was not warranted by the Act for e.g. the levy of tax on a commodity which was not taxed at all or was exempt". The bar of tax on outside sales was constitutional, contained in Art.286. The taxing of sales which did not take place within the

33. Ibid at 1877.
State was held to be outside the jurisdiction of the taxing authorities.

With due respect it is submitted that the Court did not correctly appreciate its role in the case of an implied exclusion. If the Court had classified the matter as one of jurisdiction, because the contention was that a constitutional provision had been involved, a civil suit would be maintainable notwithstanding the presence of a privative clause. But here the Court merely justified its decision on the absence of a privative clause. The *Wolverhampton* case gives the civil court jurisdiction in such cases only in the first category i.e., a case where a common law right or liability and hence falls under the third category and hence no express exclusion is necessary. On such a view it is submitted that *Basappa* case was rightly overruled in *Kerala V. Ramaswamy Iyer*.³⁴

In *Kamala Mills V. Bombay*³⁵ Justice Gajendragadkar considered the question similar to that which arose in *Basappa* case in the face of an exclusion clause. The suit was for recovery of sales-tax collected in respect of sales which took place outside the State of Bombay. The issue before the Court

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was whether by virtue of S.2036 of the Bombay Sales Tax Act, 1946, the suit was maintainable. The trial Court held that S.20 would not protect an order which contravened Article 286. The Supreme Court held that the question whether tax was levied on sales effected outside the State in reality was a question of fact where the sales took place and was left to be determined by the statutory authority itself. If the authority gave a wrong decision it could not be challenged before a Court of law. But if it is a collateral question, surely the exclusion clause would be ineffective because it is the law that in jurisdictional questions the Courts are not confined to the record of the tribunal and can take fresh evidence. The Court refused to follow its earlier decision in State Trading Corp. V. Mysore37 where a similar question was treated as jurisdictional. The dividing line between the collateral facts and facts in issue has thus become very subtle. The Court did not answer the questions whether the order was ultra vires under Art.285 or not. This is understandable because no statutory device could protect an order passed in violation of the constitution itself. The Court also did not say that the particular transaction was not a sale made outside the State. Such a view would have avoided the question of contravention of Art.286 of the Constitution. One

36. S.20 provided that no order passed under the Act shall be called in question in any court of law except as provided under SS.21 and 22.

cannot but say that the Court played legerdemain by avoiding the question of the contravention of the Constitution on the one hand and holding on the other that the taxability of a particular transaction was within the jurisdiction of the sales-tax authority. The sales-tax legislation provide effective statutory remedies like appeal and revision and an aggrieved person can approach the High Court by a reference on a question of law. It has to be said that in Kamala Mills case the Supreme Court has not gone as far as the Privy Council did in Raleigh Investment Co., case.

In Kerala V Ramaswami Iyer38 there was no express exclusion of jurisdiction of the civil courts. S.14(4) made the decision of the authority only final. In this case no jurisdictional question was involved. The Plaintiff filed a suit for recovery of tax on the ground that it was in excess of what was due under the statute. So the Court was asked to make an assessment of the tax which was not permissible. It was held that the Act was a complete code dealing with the refund of tax. The Court overruled Basappa's case relying on Kamala Mill's case. The decision finally settled the law that in the case of sales-tax assessment the jurisdiction of the civil courts is ousted with the help of a mere finality clause.

The above stated legal principle is not applicable to taxes

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other than sales-tax and income-tax. In Bharat Kala Bhandar Ltd., V. Dhamangaon Municipality the suit was for recovery of professional tax paid in excess of the constitutional requirement. The Municipal Committee contended that the suit did not comply with S.48 of the C.P. and Berar Municipalities Act, 1922. Hence the question was whether the remedy provided by the statute could be effective and conclusive and where the challenge was one of violation of the Constitution itself. The Court rejected the contention and held that no effective machinery was provided in the Act for obtaining refund of tax assessed and recovered in excess of the constitutional limit. In such circumstance, it was held, the jurisdiction of the civil court was not barred. The decision, it could be seen, completely rejects the contrary view taken by the judicial committee in Raleigh's case. In Venkataramanan and Co., Ltd., V. Madras the view was reiterated and it was even laid down that the point of constitutionability could not be raised before the statutory authority at all. So it follows that in such case of challenge the only remedies are civil suit and writ petitions.

The supreme Court summarised the law relating to the


40. S.48 prvided that no suit shall be instituted before the expiry of 2 months notice and after expiry of 6 months.

exclusion of the jurisdiction of courts (in tax cases) in Dhulabhai v. Madhya Pradesh.\textsuperscript{42} The suit was for a declaration that the M.B. Sales Tax Act, 1950 was unconstitutional and for refund of the amount illegally collected. The Sales Tax Act had provided for tax on tobacco imported from other states but exempted indigenous tobacco and thus contravened Art.30(a). There was express exclusion of civil court's jurisdiction. It was held that when an assessment was based on an unconstitutional provision, the civil court had jurisdiction to look into the matter. It was also held that apart from legality, the correctness of the assessment had to be decided by the authority itself under the Act and the civil Court would have no jurisdiction.

The law on the matter was still made uncertain by the Supreme Court with the decision in West Bengal v. The Indian Iron and Steel Co.,\textsuperscript{43}. The facts show that the plaintiffs were licenced to import spare parts of motor cycles and scooters. The Customs Collector held that the two consignments to be Rixe Mopeds complete in a knocked down condition. It was held that the jurisdiction of the Collector was to ascertain whether the goods were properly imported under the licence relating to goods under entry 275 i.e. whether they were spare


parts and accessories and not to go further and to see whether when put together they constituted autocycles in completely knocked-down condition. If he adopted such an approach he would be acting contrary to and beyond entry 295 and amounted to non-compliance of entry 295. The Tribunal was acting in excess of jurisdiction during the course of the enquiry eventhough he had embarked upon, the enquiry with jurisdiction. Their Lordships observed that when a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit. Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies questioning the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either cases the scheme of the particular Act must be examined because it is a relevant enquiry. Where the statute gives a finality to the orders of the special tribunals the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil Court would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act has not been
complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. It is submitted that the decision goes further than the statement of law and reminds the principle adopted by the House of Lords in \textit{Anisminic V Foreign Compensation Commission}.\footnote{44}

The pronouncement of the Supreme Court in \textit{Bata Shoe Co., V. Jabalpur Municipality}\footnote{45} deserves attention. The Jabalpur Municipal Committee reopened an assessment of octroi duty and imposed double duty by way of penalty. The plaintiff filed the civil suit for refund on the ground that the recovery of octroi duty and double duty by way of penalty was illegal. The trial court decreed the suit. The High Court reversed the trial court on the ground that the defendant had power to reopen and revise the assessment and it could not be questioned in the Civil Court in view of S.84(3) of the C.P. and Berar Municipalities Act, 1922 which provided:

\begin{quote}
No objection shall be taken to any valuation assessment or levy nor shall the liability of any person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.
\end{quote}

\footnote{44}{(1969) 1. All.E.R.208.}
\footnote{45}{A.I.R. (1977) S.C.955.}
It was argued before the Supreme Court that the section could protect only an assessment order passed with jurisdiction. Dealing the aspect the Court observed:

The circumstance that the Defendant might have acted in excess of or irregularly in the exercise of that power cannot support the conclusion that the assessment or recovery of tax is without jurisdiction. Applying the test in Kamala Mills case, if the appropriate authority while exercising its jurisdiction and powers under the relevant provisions of the Act holds erroneously that an assessment already made can be corrected or that an assessee is liable to pay double duty when Rule 1.4(b) does not justify such an imposition cannot be said that the decision of the authority is without jurisdiction.

The court further held that the Scheme of the Act provided an effective machinery for redressal. It is the law that if a taxing authority with jurisdiction commits an error in the process of assessment by a wrong interpretation of a statutory provision it would amount only to an error of law apparent on the face of the proceeding. Since the prevailing view of the courts is that declaration would not lie to correct an error of law

apparent on the face of the proceeding the view of the Court is understandable.

It may be said that the decision took a very narrow meaning of the concept of 'jurisdiction'. The Court held that the circumstance that the municipality might have acted in excess of the power conferred by the statute could not be characterised as excess of jurisdiction. So it follows that errors committed by a tribunal which starts with jurisdiction can be of two types; viz. errors which only render the final order wrong and errors which make the final order illegal as excess of jurisdiction.

The decision, with great respect, it is submitted that shatters the general understanding of the concept of 'excess of jurisdiction'. The general understanding is that, if the authority exceeds the power conferred and determines something which was unnecessary, the decision will be considered to be ultra vires. This means 'excess of jurisdiction' for which the jurisdiction of the civil court may be invoked. But it has to be said that the decision classified such excess committed by a tribunal by a wrong interpretation of law as only amounting to an error of law.

47. The wider meaning of the term jurisdiction given in Anisminic case has been followed in India in Union of India V. Tarchand Gupta A.I.R. (1971) S.C.1558.

M.P. Jain\textsuperscript{49} discusses the \textit{Bata} case in detail. The author vehemently criticised the decision mainly on two grounds. First, the Court held that the statute in question contained provisions enabling the aggrieved party effectively to challenge an illegal assessment or levy of double duty\textsuperscript{5}, and therefore "...by reason the existence and availability of those special remedies, the ordinary remedy by way of a suit would be excluded...." The author argues that "the machinery provided for by the Act was a pure and simple executive machinery from top to bottom and that it lacked judicial element. It may be submitted that it is difficult to accept the above argument. As stated in the beginning of this chapter, administrative tribunals and executive machinery are set up to deal with special class of cases which required speedy disposal of expert knowledge. Moreover "when power is conferred on high and responsible officers they are expected to act with caution and impartiality while discharging their duties\textsuperscript{50} and the power conferred "is delimited by the context and contour of the concept itself and if the court finds that the authority conferred with power is not

\begin{itemize}
\item \textsuperscript{49} M.P. Jain, "Judicial Response to Privative Clauses in India" J.I.L.I. vol.1 (1980).
\item \textsuperscript{50} Commissioner of Sales Tax V. Radhakrishnan (1979) S.C.249.
\end{itemize}
acting fairly then the blow will fall". Prof. M. P. Jain cites B. K. Bhandar's case in support of his argument. It is true that, there the Supreme Court declared that the provisions for appeal before a deputy commissioner could not be regarded as being on par with one as in the case of an appeal before the Appellate Assistant Commissioner under the Income Tax Act. There the Court was considering the effect of an unconstitutional assessment. What the Court held there was that the machinery provided in the Act was insufficient to challenge the constitutionality of an assessment.

The second argument of the author is that the error committed by the authority ought to have been held to be a jurisdictional error. But it is the law that if a tribunal has jurisdiction, a wrong interpretation of a statutory provision only amounts to an error of law. It is true that the "British Courts have shown great deal of activism and creativity" in the field of judicial review of administrative decisions pertaining to privative clauses. But even there, as Rubinstein says, the Courts have failed to develop the principle of 'jurisdictional error' into "a consistent jurisdictional doctrine". Lack of a 'Constitution' made it incumbent on the part of the judiciary to


extent the principle of 'jurisdictional error' to the extreme ends. But in India, the Courts did not feel the need of the enlargement of the principle of jurisdictional error because the jurisdiction under Art.226 cannot be whittled down by such devices.

In State of Tamil Nadu V Ramalinga Samigal Madam

The question that came up for consideration was whether the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act excluded the Jurisdiction of Civil Court in respect of matters considering the nature of land. The apex court has reiterated the decision given in mask and Co. case. In Anwar V 1st Additional District Judge, Bulandshahr and Others (A.I.R.1986 SC 1785), the question was whether in matter arising under the Motor Vehicles Act, a Civil Court can grant injunction restraining the hearing authority from proceeding with the hearing of the case and exercising its statutory functions under the said Act. The Court held that where the statute gives finality to the orders of a special tribunal, the Civil Court's Jurisdiction must be held to be excluded in so far as the merits of the case is concerned. Section 9 of the Code of Civil Procedure says that Courts shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either


expressly or impliedly barred. Once the jurisdiction of the Court to try a suit in which the validity of any order passed under the provisions of the Corporation Act or the notice issued thereunder has been specifically barred and an internal remedy has been provided for redressal of the grievances of the persons concerned, there is no scope for Court to entertain a Suit.55

Hence, it may be concluded that in the case of fiscal statutes the civil courts would not be permitted to make a reassessment under any circumstance. An order of assessment may be challenged before a civil court on the ground that the authority had no jurisdiction in the matter. A wrong interpretation of law would not amount to a jurisdictional error but only to an error of law committed within jurisdiction. Other grounds on which an assessment order may be called in question before a Court of law are that the statute itself is unconstitutional and that a fair judicial procedure has not been followed by the tribunal or authority.

In Srikant Kashinath Jituri V Balgaun Corporation56 the question was whether a writ is maintainable, even though there is finality of the order of the authorities. A suit is also maintainable in spite of Section 9 of the Code of Civil


Procedure. It was held that both the jurisdictions are different and are governed by different principles. Article 226 provides a constitutional remedy. It confers the power of judicial review of High Courts. The finality clause in a statute is not a bar to the exercise of this constitutional power whereas the jurisdiction of a civil court arises from another statute viz. S.9 of the Civil Procedure Code.

If the Act does not provide an adequate remedy, even if there is an express bar of the jurisdiction of civil court, it cannot be said that the jurisdiction of Civil Court is completely ousted. In Liely Bai V Chinna Thal57. The question was whether the civil court has jurisdiction to decide a matter which is within the purview of the Tamil Nadu Recorganised Private Schools (Regulation) Act, 1973. It was held that civil court's jurisdiction is expressly barred and hence there is no jurisdiction.

6.2 Jurisdictional Error:

The Supreme Court considered the jurisdiction of the Civil Court in a very early case, Brij Raj Krishna V. Shaw Bros.58 There the order of eviction passed by the House Controller on the ground of non-payment of rent was challenged as one made without jurisdiction. It was argued that the 'non-

payment of rent' was a jurisdictional fact on the existence of which only the House Controller had jurisdiction to order eviction. The Supreme Court rejected the contention and upheld the eviction order on the view that the House Controller had jurisdiction to deal with the matter under the law and could determine whether there was non-payment of rent or not, and to order eviction on finding that there was non-payment of rent. But in an article it was argued that the question of 'non-payment of rent' was a jurisdictional fact, on the footing that the House Controller gets jurisdiction only on the determination of the preliminary question. It may be submitted that the argument does not hold good on the score that non-payment of rent is a ground for granting relief to the landlord and not a collateral fact which gives jurisdiction. In such cases the collateral fact is that the Applicant and Respondent should be parties to a tenancy arrangement with respect to a building. Whether the case is one in which an order of eviction has to be passed or not is a matter well within the power of the tribunal to decide.

In Mohammed Illayas V. Muhammed Hasibur Rahman Justice Lalith Mohan Sharma has made a brilliant analysis of the


question of exclusion of jurisdiction. His Lordship classified the cases dealing with special tribunals into three categories:

1. Where the Legislature confers jurisdiction on such tribunals to proceed in a case, conditional on the existence of certain state of facts,
2. Where a tribunal is vested with jurisdiction including the jurisdiction to decide whether the preliminary state of facts on which the exercise of jurisdiction depends, exists and
3. Where existence of certain state of facts is a condition precedent to the grant of a particular relief, but is not a condition for the exercise of jurisdiction by the tribunal to entertain an application and decide it on merits. The question whether certain state of facts exists or not can be examined by the Civil Court only in the first category of cases, as the existence of the same as a matter of fact is a sine qua non for the exercise of jurisdiction by the tribunal. If the civil court comes to a conclusion that the essential facts do not exist, it can declare the decision of the tribunal as without jurisdiction. In the other two cases, the civil court has no such powers. In the second case the finding of the tribunal even if erroneous, will be binding on all concerned as the tribunal is vested with the final and conclusive jurisdiction to agitate on the point. In the last case, the decision even if incorrect cannot be challenged collaterally since the jurisdiction is not dependent on the question in controversy".

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In the above case, the facts were that the Plaintiffs had purchased some land from the second defendant. The first defendant made an application for pre-emption before the appropriate authority. The Plaintiff contended that the defendant's application was liable to be dismissed as he was holding the land in excess of the ceiling area. The contention was rejected by the appellate authority and it was found that the holding was within limits. On appeal before the High Court, the Plaintiff argued that the defendant was holding in excess of the ceiling area and hence the revenue authority could not usurp a jurisdiction to allow his prayer for pre-emption by recording an erroneous finding in regard to the area of his holding. The court held that the power of the Collector to entertain an application under S.16(3)(1) of the Act was not dependent on the applicant holding land lesser in area than the maximum ceiling area. If the authority came to the conclusion that the area held by the applicant was not in excess, the application could be allowed. If there was any error, the remedy would be that provided by the Act. The right of pre-emption existed on the basis of the area held by the applicant. If the land held was in excess there was no right of pre-emption. It clearly showed that question as to the area of land held was not a jurisdictional question. Hence the civil court was held to be incompetent to correct the error. The above approach of the court seems to be the apt one. In this case the adequacy of the remedy provided in the Act was not in question and was not considered.
In Katikara Chintamoni Dora v Guatredili Annamanaidu the Supreme Court considered the question whether a suit before the Civil Court is barred by S.9(1) of the Madras Estates (Abolition and Conversion into Ryotwari) Act, 1948. The above section of the Act made the order of the settlement officer and of the Tribunal exclusive with regard to the question whether "any inam village" was an "inam estate" or not. The Supreme Court held that the enquiry by the Settlement officer was confined to the ascertainment of only two issues of fact; was Kadakkala an "inam village" and if so was it an "inam estate". Once the second issue was determined, the enquiry would be complete. If he went beyond those limits and determined something which was unnecessary then that could be questioned in the civil court.

The Court also held that the settlement officer's finding that it was an inam village was not final or conclusive since it was of a jurisdictional fact, only, the pre-existence of which is a sine qua non to the exercise of his exclusive jurisdiction.

On an analyse of the above case in tune with the proposition laid down in Muhammed Illayas's case, the question to be answered is whether the above problem falls within the first category or not. In this case, the Settlement Officer can decide, whether certain property was an "inam estate" or not

only if the property was seen to be an "inam village". Hence it may be submitted that the question whether a particular property was an "inam village" falls within the first category of the proposition in Muhammed Illayas' case.

If the authority does not comply with the provisions of the Act, then it will be acting in excess of jurisdiction. In that case, the Supreme Court held that the term 'jurisdiction' has two meanings: a narrow one and a wider one. The above proposition was in the wider meaning of the term jurisdiction and held the ouster clause to be ineffective.

On an evaluation of the cases discussed so far, it becomes obvious that in the case of privative clauses, the first question that the judge decides is whether he should interfere in a particular case or not. If the answer is positive, the only thing he does is to categorise the case as one which lacks jurisdiction. On the other hand, if the judge takes an attitude of non-interference, he will characterise it as an error committed within the jurisdiction of the authority. It may be noted that bearing the above point in mind Mathew, J. observed in M.L. Sethi V R.P. Kapur that the difference between jurisdictional error and

63. Tarchand's case supra. In this case, the Supreme Court accepted the decision in Anisminic V. Foreign Employment Commission (1969) I All. E.R.208.

64. A.I.R. (1972) S.C.2379.
error of law within jurisdiction is reduced almost to vanishing point. His Lordship observed:

The practical effect of the decision (in Anisminic case) is that any error of law can be reckoned as jurisdictional. This come close to saying that there is jurisdiction if the decision is right in law but not if it is wrong... It is really a question of how much latitude the Court is prepared to allow. And there is no yardstick to determine the magnitude of the error other than the opinion of the Court.65 A pertinent observation to the same effect was made by Denning, M.R. in Pearlman V. Governors of Harrow School,66 ".... the distinction between an error which entails absence of jurisdiction and an error made within the jurisdiction is very fine. So fine indeed that it is rapidly being eroded".67

6.3 Non-Compliance with Statutory Provisions:

In Mask and Co., case the Judicial Committee laid down two leeways through which the court can peep into the validity of an administrative action. First of them is non-compliance with the statutory provisions. In this case the Privy Council had not explained the term 'non-compliance of the provisions of the statute'. Is a mere non-compliance enough to invalidate the

65. Ibid at 2385.
67. Ibid at 371.
administrative action? Or should there be non-compliance of some important provision to vitiate the proceedings? These are some of the analogous questions to be answered. The Supreme Court in Iluri Subbaya's case observed:

Non-compliance with the provisions of the statute to which reference is made by the Privy Council must be non-compliance with such fundamental provisions of the statute as would make the entire proceedings before the appropriate authority illegal and without jurisdiction.68

It may be submitted that the above addenda to the proposition in the Mask & Co., case is hardly useful since the term 'fundamental' is not definite and unqualified. What are the provisions which can be considered to be fundamental? The settled principle is that all provisions from the preamble to the concluding section are equally important and integral as far as a statute is considered. Hence it follows that the question whether certain provisions of a statute is complied with or not is to be judged from the facts of each case and should determine whether it will vitiate the order or act of the administrative authority or not.

If an Act confers certain powers on an authority it should act in accordance with the provisions of the statute. In other

68. AIR (1964) SC 322, 326.
words the authority gets jurisdiction by virtue of the Act. One line of thought is that if the authority did not follow the provisions of the law, he will be acting without jurisdiction. Hence such class of cases may be included under the heading jurisdictional error as well. But here the class of cases is dealt with as a separate category.

In *Tarachand*'s case the question was whether the tribunal had exceeded its jurisdiction and therefore acted in non-compliance with the provisions of the statute under which it had to decide the question. The approach of the authority was held to be in non-compliance of entry 295. The view of the Court was contrary to that expressed in *Union of India V. Narasimhalu* 69 in which the same provision of the same Act was in question and in *West Bengal V. Indian Iron and Steel Co.*, 70 In the latter case, the mode of computation of net profits for imposing cess under the Bengal Cess Act, 1880 was in question. The Supreme Court held that the computation was not in violation of any provision of the law. It rightly observed: "The mode of computation is a matter for the assessing authority

69. (1969) 2 S.C.C.658. There the Court held that the jurisdiction of the Court was ousted for purposes of suit by S.188 of the Sea Customs Act.

70. A.I.R. (1970) S.C.1298. There the respondent claimed refund of excess amount collected from it on the ground that it earned no profits from the colliery during the years 1946-47, 1947-48, 1948-49.
except where the computation is done in violation of any provisions of law".71

In Raja Kandragula Srinivasa V. Andhra Pradesh72 the appellant contended that the order of the Inam Settlement Officer was not made in strict compliance of the provisions of S.3(2) and hence the suit was not hit by S.1(1) of the Madras Estates Land (Reduction of Rent) Act, 1947. The Court held that the privative clause was inapplicable in the above case for the settlement officer had come to the conclusion on the strength of facts regarding the adjacent village. The order of the Government under S.3(2) was exclusively on the basis of the recommendation of the settlement officer. Hence it was held that the order was not in conformity with the provisions of the Rent Reduction Act and so outside the purview of S.3(2) of the Act.

6.4 Constitutional Invalidity

The question of unconstitutionality of a taxing provision was first raised in Raleigh's case and the Privy Council was very vague about the civil courts jurisdiction. The Act, it was observed, contained an effective machinery and so even the vires of the Act could be raised before the authority created under the Act, for that purpose. The Income Tax Tribunal was

71. Ibid at 1301.
itself a creation of the Income Tax Act. It is not reasonable to say that proper forum to look into the vires of the Act is the tribunal, a creature of the same 'ultra vires' Act. The rationale behind the observation is unintelligible.

It is to be noted that the Supreme Court was not prepared to accept the dictum in Raleigh's case that the vires can be challenged before the forum provided by the Act, eventhough the Supreme Court adopted a strict view with regard to the reopening of taxing cases. In Pabbojan Tea Co., Ltd. V. Deputy Commissioner73 Mitter, J. observed: This Court was not prepared to accept the dictum in the judgement to the effect that even the constitutional validity of the taxing provisions would have to be challenged by the Income Tax Act.74

The view of the Supreme Court on violation of constitution in Income tax and sales tax cases is different from such violation in other taxing statutes. In the former if the taxing statute itself is not ultra vires the Constitution, the Civil Suit is ousted.75 But if the statute itself is ultra vires the Constitution, the civil suit lies as was held in Dhulabhai's76

74. Ibid at 276.
case. In the cases of other taxes both these matters are open to be challenged before a civil court.77

6.5 Violation of the Fundamental Principles of Judicial Procedure

The ouster clause will not hold good where "the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."78 Violation of the principles of judicial procedure renders the decision void.79 The Supreme Court accepted that the defect would go to the root of the order and would make it invalid and void. In one case the Supreme Court observed: "Similarly if an appropriate authority has acted in violation of the fundamental principle of judicial procedure, that may also tend to make the proceedings illegal and void and this informity may affect the validity of the order passed by the authority in question".80

One of the rules of natural justice is that the authority who makes the decision capable of affecting the right of an individual should give him a proper hearing. The question is whether a decision, which is taken without giving the party a proper hearing, can claim protection under the ouster clause. Such a question arose in the case of Pabhojan Tea Co., V.

There the appellant was called upon to pay minimum wages to the employees by the Deputy Commissioner. The Management, there-upon, filed an application alleging that certain employees were incapable of performing full days work owing to old age and contended that the Government notification fixing the minimum wages was not applicable to them. The Deputy Commissioner dismissed the application without a hearing. The Supreme Court held that: "...it was the duty of the authority to give a proper hearing to the parties allowing them to tender such evidence, as they think proper, before making an order which may have far reaching consequences." It was held that the civil court had jurisdiction to entertain the suit. Here there was a statutory duty to afford a hearing.

Another decision in this area is in the case of Raja Kandragula Srinivasa V. Andhra Pradesh. There the Inam Settlement Officer came to the conclusion that a particular village was an inam estate. The respondent contended that the suit was not maintainable by virtue of S.80 of the Act. There was no statutory definition to which one can turn for the purpose of determining wet, dry and garden lands as

82. Ibid at 278.
84. Under the Madras Estates Land (Reduction and Rent) Act, 1947.
contemplated by the Act. Hence the matter had to be determined by holding an enquiry into the factual position. But there the officer came to the conclusion on the strength of facts regarding the adjacent village. There was no evidence regarding the particular village in question. The determination of the Special Officer was based on no evidence. In this case no question of natural justice was involved. In this connection it is to be accepted that principles of judicial procedure is something more than the principles of natural justice.

In Commissioner, Corporation of the City of Bangalore V. Kapporchand85 notices were issued to the owners and occupiers requiring them to demolish the building and to keep the premises clean. The respondents filed suits for injunction on the ground that no hearing was given. The Applicants contended that the court had no jurisdiction to look into the matter by virtue of S.444(3) of karnataka Municipal Corporation Act, 1977 which provided that the decision of the Corporation should be final. It was also urged that S.322(1) provided for an appeal. The Karnataka High Court held that since there was no imminent danger to the buildings, it was obligatory on the part of the Appellant to comply with the principles of natural justice before passing the impugned order.

6.6 The Parallel Machinery Provided in the Act:

In almost all the cases discussed above, the court had made a search to see whether effective redressal machinery has been provided in the Act. This is because "the mere fact that special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute. Where the machinery provided is not effective or adequate to provide a remedy to the aggrieved person, the court will not accept the exclusion clause however expressly provided and make a redecision of the matter. In Sayed Mohamed Baquir El-Edroos V. Gujarat, the state of Gujarat declared that the Bombay Personal Inam Abolition Act, 1953 was applicable to inam village and hence the exception from the payment of revenue was extinguished. The village in question was held by the religious institutions. The Sajjadashin was required to surrender the village records. Hence the suit. The state contended that the court had no jurisdiction to decide the question because by S.2(1)(e) the question whether the grant is a personal inam or not is to be decided by Government. The Supreme Court held following principles laid down in Dhubbai's case, that S.2(1)(3) of the Act did not exclude the jurisdiction

of the civil Court because the Act did not provide adequate remedy to the plaintiff on reference made to the Government. Another ground for maintaining jurisdiction was that there was no express provision excluding jurisdiction except the explanation to S.2(1)(3) imposing finality.89

The exclusion provided in the Industrial Disputes Act was held to be ineffective since an aggrieved person could not approach the Tribunal or the Labour Court directly for the redress of his grievance without the intervention of the Government.90 Similarly in another case it was held that since the Act had devised its own special machinery for inquiring into and adjudicating upon such challenges, the remedy by way of a suit stood necessarily excluded and could not be availed of by an order of assessment to octroi duty.91 In another occasion, the court did not accept the contention that the suit claiming a declaration that the person was removed from service illegally was barred since the dispute was in the nature of an individual dispute and held that the court would assume jurisdiction once it was proved that the dismissal was wrongful.92

89. Ibid P.2020.

90. Premier Automobilies V Kamalakar Shantaram Wedke, A.I.R. (1975) S.C. 2238. The main question for consideration was whether the civil court had jurisdiction to entertain the suit.

91. Bata Shoe Co's case.