

SUPREME COURT OF INDIA

Municipal Commissioner of Dum Dum Municipality and Others

Vs

Indian Tourism Development Corporation and Others

Civil Appeals Nos. 6696, 6698-6700 of 1995

(S. C. Agarwal, B. P. Jeevan Reddy JJ)

01.08.1995

JUDGMENT

B. P. JEEVAN REDDY J.

1. Leave granted.

2. The question arising in this batch of appeals is whether the properties vested in the International Airports Authority of India under the provisions of International Airports Authority Act, 1971 can yet be called the properties of the Union within the meaning of Article 285 of the Constitution of India and, therefore, exempt from all taxes imposed by a State or by any authority within a State - to be more precise by the municipality. The Delhi High Court has answered the said question in the negative, i.e., in favour of the Delhi Municipal Corporation whereas the Calcutta High Court has taken a contrary view. A learned Single Judge of the Bombay High Court has also taken the same view as the Calcutta High Court but the said judgment is now the subject-matter of a letters patent appeal before the Division Bench of the same court.

3. Article 285 comprises two clauses. Though clause (2) is not attracted in these matters, we may yet set out the entire article :

"285. Exemption of property of the Union from State taxation. - (1)

The property of the Union shall, save insofar as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State."

4. According to clause (1), the properties of the Union of India shall be exempt from all taxes imposed by a State or by any other authority within a State except insofar as Parliament may by law provide otherwise. A municipality or a municipal corporation is certainly an authority within a State. Therefore, the municipality is not competent to levy any taxes upon the properties of the Union of India by virtue of this article. But what the Municipal Corporations of Delhi and Calcutta say is that the properties which they are seeking to tax now are not the properties of the Union but

the properties of the International Airports Authority of India (Authority) and that the properties of the Authority do not enjoy the immunity in clause (1) of Article 285. For a proper appreciation of the question, it is necessary to examine the provisions of the International Airports Authority of India Act, 1971 which created the said Authority. But before we do that, it would perhaps be appropriate to refer to the taxing provisions in the Delhi Municipal Act and the Bengal Municipal Act and also mention briefly how the disputes have arisen.

5. Section 113 of the Delhi Municipal Corporation Act specifies the several kinds of taxes which the Corporation shall levy for the purpose of the Act. Property tax is one of the taxes mentioned in this section. Section 119 exempts the properties of the Union from taxation. Sub-section (1) of Section 119 is practically a repetition of Article 285. It is not necessary to set out the provisions of this section inasmuch as Article 285 prevails irrespective of the wording of this section. Pursuant to the provisions of the Delhi Municipal Corporation Act, the Municipal Corporation levied property taxes upon the land and properties comprised in Indira Gandhi International Airport Terminal-II. The construction of the said terminal was commenced in May 1986. The Corporation levied taxes with effect from 1-4-1986 upon the properties comprised in the said terminal. When a notice of demand was served upon the Authority for payment of the tax assessed by the Corporation, the Authority filed Writ Petition No. 578 of 1987 in the Delhi High Court challenging the demand. The main contention of the authority was that the property of the Union of India has been vested in it by the Act only for the purpose of its management and administration and that the properties continue to be owned by the Union and hence, exempt from taxation under Article 285 of the Constitution. The writ petition was dismissed by the Delhi High Court on 8-1-1991 which is the subject-matter of Civil Appeal No. 6698 of 1995 [arising from Special Leave Petition (C) No. 1176 of 1991].

6. The Authority has granted a licence in respect of a portion of the land vesting in it in favour of Air India, which is a corporation constituted under the provisions of the Air Corporations Act, 1953. Air India has constructed certain buildings upon such land. The Delhi Municipal Corporation levied property taxes upon the said buildings and made a demand upon Air India, questioning which it filed Writ Petition (C) No. 3889 of 1975 in the Delhi High Court. The contention in this writ petition is practically the same as in the writ petition filed by the Authority. Air India's additional submission was that since the land upon which it has constructed its buildings is vested in the Authority, no taxes could have been levied upon Air India. Against the dismissal of the writ petition, Air India has preferred Civil Appeal No. 6699 of 1995 [arising from Special Leave Petition (C) No. 7882 of 1993].

7. The Union of India has preferred an independent appeal [arising from Special Leave Petition (C) No. 5926 of 1991] against the judgment of the Delhi High Court in Writ Petition (C) No. 578 of 1987.

8. Section 123 of the Bengal Municipal Act, 1932 empowers the Commissioners to levy a rate on the annual value of the holdings. Section 128 lays down the method of determining the annual value. Tax can be levied both on land and buildings. The Dum Dum Airport at Calcutta vests in the Authority by virtue of the provisions of the Act. The Authority granted a licence in respect of a portion of land vesting in it in favour of the Indian Tourism Development Corporation Limited (ITDC) whereupon the latter has constructed a hotel known as "Hotel Airport Ashok". The Dum Dum Municipality levied property taxes upon the said land and the hotel building constructed thereon and made a demand therefor on ITDC. Questioning the demand, ITDC approached the Calcutta High Court by way of a writ petition contending that inasmuch as the land on which the hotel is constructed is the property of the Union of India - which had been vested in the Authority

only for the purpose of management of the airport - no taxes can be levied upon such land nor can any taxes be levied upon buildings constructed upon such land. The ITDC further contended that inasmuch as the property tax levied under the West Bengal Municipal Act, 1932 was a composite tax both upon the land and building, no taxes can be levied upon the building if no taxes can be levied upon the land. Both the said contentions have been upheld by a learned Single Judge of the Calcutta High Court whose decision has been affirmed on appeal by a Division Bench. Civil Appeal No. 6696 of 1995 [arising from Special Leave Petition (C) No. 5337 of 1988] arises from the judgment of the Division Bench.

9. We may now take up the provisions of the International Airports Authority Act, 1971. The preamble to the Act says that it is "an Act to provide for the constitution of an authority for the management of certain aerodromes whereat international air transport services are operated or are intended to be operated and for matters connected therewith". Sub-section (3) of Section 1 says that the Act shall apply in the first instance to the aerodromes of Bombay (Santa Cruz), Calcutta (Dum Dum), Delhi (Palam) and Madras (Meenambakkam) and to such other aerodromes as the Central Government may notify in that behalf. Section 2 defines certain expressions occurring in the Act. The expression 'Airport' is defined in clause (a) to mean "an aerodrome as defined in clause (2) of Section 2 of the Aircraft Act, 1934 (22 of 1934) and to which this Act applies or is made applicable". 'Authority' is defined in clause (c) to mean "International Airports Authority of India constituted under Section 3".

10. Section 3 provides for the constitution and incorporation of the Authority. It says that with effect from the commencement of the Act, the Central Government shall constitute an authority to be called the International Airports Authority of India. Sub-section (2) says, "the Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property both moveable and immovable, and to contract and shall by the said name sue and be sued". The Authority comprises of certain number of members, all of whom are appointed by the Central Government.

11. Chapter III is entitled "Property and Contracts". Section 12 in this chapter provides for "transfer of assets and liability of Central Government to the Authority". Sub-section (1) of Section 12 reads :

"12. (1) Save as otherwise provided in sub-section (2), as from such date as the Central Government may appoint by notification in the Official Gazette in relation to any airport, -

(a) all properties and other assets vested in the Central Government for the purposes of the airport and administered by the Director General of Civil Aviation immediately before such day shall vest in the Authority;

(b) all debts, obligations and liabilities, all contracts entered into and all matters and things engaged to be done by, with, or for the Central Government immediately before such day for or in connection with the purposes of the airport shall be deemed to have been incurred, entered into and engaged to be done by, with, or for the Authority;

(c) all non-recurring expenditure incurred by the Central Government for or in connection with the purposes of the airport up to such day and declared to be capital expenditure by the Central Government shall, subject to such terms and conditions as

may be determined by the Central Government, be treated as the capital provided by the Central Government to the Authority;

(d) all sums of money due to the Central Government in relation to the airport immediately before such day shall be deemed to be due to the Authority;

(e) all suits and other legal proceedings instituted or which could have been instituted by or against the Central Government immediately before such day for any matter in relation to the airport may be continued to be instituted by or against the Authority;

(f) every employee holding any office under the Central Government immediately before such day solely or mainly for or in connection with such affairs of the airport as are relevant to the functions of the Authority under this Act shall be treated as on deputation with the Authority but shall hold his office in the Authority by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement or other terminal benefits as he would have held such office, if the Authority had not been constituted and shall continue to do so until the Central Government, either on its own motion or at the request of the Authority, recalls such employee to its service or until the Authority, with the concurrence of the Central Government, duly absorbs such employee in its regular service, whichever is earlier :

Provided that during the period of deputation of any such employee with the Authority, the Authority shall pay to the Central Government, in respect of every such employee, such contribution towards his leave salary, pension and gratuity as the Central Government may, by order, determine :

Provided further that any such employee, who has, in respect of the proposal of the Authority to absorb him in its regular service, intimated within such time as may be specified in this behalf by the Authority his intention of not becoming a regular employee of the Authority, shall not be absorbed by the Authority in its regular service."

12. Sub-section (3) says that

"if any dispute or doubt arises as to which of the properties, rights or liabilities of the Central Government have been transferred to the Authority or as to which of the employees serving under the Central Government are to be treated as on deputation with the Authority, under this section such dispute or doubt shall be decided by the Central Government in consultation with the Authority and the decision of the Central Government thereon shall be final."

Section 13 declares that any land required by the authority for discharging its functions shall be deemed to be needed for a public purpose and can be acquired as such under the Land Acquisition Act, 1894. Section 14 says that subject to the provisions of Section 15, the Authority shall be competent to enter into and perform any contract necessary for the discharge of its functions under the Act. Section 15 prescribes the mode in which contracts on behalf of the Authority shall be executed.

13. Chapter IV sets out the functions of the Authority. Sub-section (1) of Section 16 says that

"subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the Authority to manage the airports efficiently". Sub-section (2) casts a duty upon the authority to provide at the airports such services and facilities as are necessary and desirable for the efficient operation of air transport services at such airports. The proviso to sub-section, however, says that the function of providing air navigation services at the airport shall, however, continue to be discharged by the Central Government until such date as the Central Government may specify. Sub-section (3) elaborates the functions of the Authority. It includes developing, constructing and maintaining runways, taxiways, aprons, terminals and ancillary buildings at the airports, to construct residential buildings and create townships for its employees, establish and maintain hotels, restaurants, and restrooms at or near the airports and so on.

14. Chapter V deals with finance, accounts and audit. Section 19 in this chapter says that the authority shall have its own fund and all receipts of the Authority shall be credited thereto and all payments of the Authority shall be made therefrom. Section 18 says that the Central Government may provide any capital, over and above the capital provided under Section 12(1)(c) that may be required by the Authority for discharge of its functions. The Central Government can also "pay to the Authority, on such terms and conditions as the Central Government may determine, by way of loans or grants such sums of money as the Government may consider necessary for the efficient discharge by the Authority of its functions under this Act". [Section 18(b)]. Section 20 provides the manner in which surplus funds have to be allocated by the Authority. According to this section, any balance of its annual net profits remaining after meeting its expenditure and after providing for reserves etc. shall be paid over to the Central Government. Sections 21 to 24 contain certain regulatory provisions concerning the finances of the Authority.

15. Chapter VI entitled 'Miscellaneous' comprises Sections 25 to 41. Section 25 creates an obligation upon the Authority to prepare and submit to the Central Government, at the end of each financial year, an annual report in the prescribed form giving an account of its activities during that financial year and shall also set out therein an account of the activities which it proposes to undertake during the next financial year. Such report has to be laid before both Houses of Parliament as soon as it is submitted. Section 31 provides specifically that "for the purposes of the Income Tax Act, 1961 (43 of 1961) or any other enactment for the time being in force relating to income tax or any other tax on income, profits or gains, the Authority shall be deemed to be a company within the meaning of the Income Tax Act, 1961 (43 of 1961) and shall be liable to tax accordingly on its income, profits and gains". Sections 33 and 34 confer upon the Central Government certain powers vis-a-vis the authority to which we must refer in a little more detail in view of the fact that they are strongly relied upon before us in support of the proposition that the properties vested by the Act in the Authority do yet constitute and represent the properties of the Union. Sub-section (1) of Section 33 says

"if at any time, the Central Government is of opinion that in the public interest it is necessary or expedient so to do, it may, by order, direct the Authority to entrust the management of any airport with effect from such date and to such person as may be specified in the order and the Authority shall be bound to comply with such direction
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Provided that before an order is made under this sub-section the Authority shall be given a reasonable opportunity of being heard in the matter."

Sub-section (3) says that an order made under sub-section (1) of Section 33 shall,

unless rescinded sooner, be in operation for a period of six months which can be extended for a further period or periods not exceeding eighteen months. Sub-section (4) says that during the operation of an order made under sub-section (1) it shall be competent for the Central Government to issue from time to time such directions to the Authority as are necessary to enable the authorised person to exercise the powers and discharge the functions of the Authority effectively. Sub-section (5) says that on the cesser of operation of an order made under sub-section (1) in relation to any airport, the authorised person shall cease to exercise any powers and functions and the Authority shall continue to exercise and perform such powers and functions according to the Act. Sub-section (6) clarifies that on the cesser of an order under sub-section (1), the authorised person shall hand over all or any property remaining with him to the Authority. Section 34 confers upon the Central Government the power to supersede the Authority in certain situations and for a limited period. Sub-section (1) of Section 34 reads thus :

"34. (1) If, at any time, the Central Government is of opinion -

(a) that on account of a grave emergency the Authority is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of which default the financial position of the Authority or the administration of any airport has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do;

the Central Government may, by notification in the Official Gazette, supersede the Authority for such period, not exceeding six months, as may be specified in the notification :

Provided that before issuing a notification under this sub-section for the reasons mentioned in clause (b), the Central Government shall give a reasonable opportunity to the Authority to show cause why it should not be superseded and shall consider the explanation and objections, if any, of the Authority."

16. Sub-section (2) sets out the consequences and effects of a notification published under sub-section (1) of Section 34. With effect from the date of such publication superseding the Authority, all the members shall vacate their offices with effect from their supersession and all the powers, functions and duties of the Authority shall be exercised and discharge by such person or persons as the Central Government may direct. Clause (c) of sub-section (2) says that with effect from the date of publication of notification under sub-section (1) superseding the authority "all property owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government". Section 35 says that the Authority shall be bound by such directions as may be given by the Central Government on questions of policy. The proviso to sub-section (1), however, provides that before giving any such direction, the Authority shall be given an opportunity to express its views in the matter. Section 36 confers rule-making power upon the Central Government whereas Section 37 confers the regulation-making power upon the Authority.

17. For the sake of convenience, we shall refer to the Authority and its licensees (Air India and ITDC) in the ensuing discussion as appellants and the Municipal Corporation of Delhi and the Dum Dum Municipality as respondents, notwithstanding the fact that in Civil Appeal No. 6696 of 1995 [arising out of Special Leave Petition (C) No. 5337 of 1988] Dum Dum Municipality is the appellant.

18. The contention of the learned counsel for the appellants is to the following effect : the expression 'vesting' has several shades of meaning. It does not necessarily mean the vesting of ownership. The character of vesting has to be determined with reference to the relevant provisions of the enactment. In the case of the International Airports Authority Act, 1971, the vesting is only for the purpose of management of the airports. In other words, what is vested is only the management and operation of the airports with a view to ensure better and efficient operation of services at such airports. The properties which were vesting in the Union of India and which are vested in the Authority by and under Section 12 of the Act continue to be the properties of the Union of India. They never became the properties of the Authority. May be, the properties acquired by the authority subsequent to its constitution become its own properties but so far as the lands and buildings which were in existence on the date of the constitution of the Authority and which were vested in it, they continue to be the properties of the Union of India. So far as the land which has been given on licence to Air India is concerned, Shri Nariman says, it is the land which belonged to the Union of India and was vested in the Authority under Section 12 of the Act on its constitution in the year 1972. No taxes can, therefore, be levied upon such land by the Delhi Municipal Corporation. If the land cannot be taxed, the buildings thereon cannot also be taxed. So far as "Hotel Airport Ashok" is concerned, the land upon which it is located was given on licence to ITDC by the Authority. It is equally the property of the Union of India which vested in the Authority by virtue of Section 12. Moreover, the Bengal Municipal Act, 1932 provides for levy of an integrated and composite tax upon a holding - which expression is defined to mean "land held under one title or agreement and surrounded by one set of boundaries" by clause (21) of Section 3. The land and the building thereon cannot be dissociated from one another and hence, no tax can be levied upon the building alone if no tax can be levied upon the land. It is further submitted that the Government of India has repeatedly decided, as contemplated by Section 12(3) of the Act, that the properties concerned herein are the properties of the Union of India and thus exempt from tax. This decision was communicated to the Municipal Corporation of Delhi as well. The said decision, being a statutory decision, is binding upon the Municipal Corporation of Delhi. We find it difficult to agree with the learned counsel for the appellants.

19. The power to carry on a business is an incident of proprietary power. Even before the present Article 298 was substituted by the Constitution Seventh Amendment Act, 1956, this Court had taken the view that the State is entitled to engage itself in all activities necessary for the promotion of the social and economic welfare of the community and that for doing so no specific legislation is necessary except where the State proposes to encroach upon private rights in order to enable it to carry on its business. [Rai Sahib Ram Jawaya Kapur v. State of Punjab] With a view to put the matter beyond any doubt, Article 298 was substituted altogether by the Seventh Amendment Act. It reads :

"298. Power to carry on trade, etc. - The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :

Provided that -

(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

20. According to the statement of objects and reasons appended to the Bill, the said amendment was brought in "to make it clear that the Union Government, as well as State Governments, are competent to carry on any commercial or industrial undertaking, whether or not it is related to a matter within the legislative competence of the Union or as the case may be of the State. Similarly, the holding, acquisition and disposal of property and the making of contracts by the Union or a State could be for any purpose without constitutional impropriety".

21. Even before the advent of the Constitution, the State had been carrying on several activities which were in the nature of commercial/trading/manufacturing activity but with the advent of the Constitution introducing the concept of a Welfare State - or a Socialist State, as the case may be - both the State and Central Governments embarked upon an extensive and systematic course of activity where under several business ventures were commenced and in many cases taken over. Within a few years, however, it was realised that a business is to be carried on as a business and not in the manner of governmental activity. Accordingly, the Central and State Governments started creating corporations for carrying on these activities. In the case of major public utilities, statutory corporations were created under different enactments. For example, Road Transport Corporations under Road Transport Corporations Act, Electricity Boards under the Electricity Supply Act, 1948, Air India and Indian Airlines under the Airlines Corporation Act, Life Insurance Corporation under the Life Insurance Corporation Act and so on. In respect of several undertakings, companies were registered under the Companies Act. With a view to enable these statutory corporations and companies to carry on the activity which was hitherto carried on by the Governments, the relevant properties, assets and liabilities were transferred to such new corporations. They were supposed to operate on business lines, pay taxes and justify their creation and constitution. These corporations, whether created under the statute or registered under the Companies Act are distinct juristic entities owning their own properties, having their own fund, capable of borrowing and lending monies and entering into contracts like any other corporation. In many cases, the entire share capital of these corporations is owned by the Government whether Central or State. In some cases, the major shareholding is of the Government with some private shareholding as well. In case of some statutory corporations, the enactment creating them did not provide for any share capital, though it was made a body corporate with all the necessary and incidental powers that go with such concept. The International Airports Authority is one such corporation created under the Act with no share capital but which has its own properties, its own fund, accounts, employees and capable of lending and borrowing and entering into contracts. The properties held by it can be categorised into two, viz., (1) those that were transferred to it under Section 12 of the Act at the time of its inception and (2) those that have been acquired by it subsequent to its constitution. There is no dispute about the second category of properties. Admittedly they are the properties of the Authority and not the properties of the Union. The only controversy is with respect to the first kind of the properties.

22. It is true that the expressions 'vest' and 'vesting' have different shades of meaning as pointed out by this Court in *Fruit and Vegetable Merchants' Union v. Delhi Improvement Trust* and that the nature and character of vesting has to be ascertained with reference to the relevant provisions of the

enactment. But the question is what is the nature and character of vesting under the International Airports Authority Act, 1971 ? Shri F. S. Nariman, who led the arguments on behalf of the appellants laid great stress upon the preamble to the Act and sub-section (1) of Section 16. Learned counsel contended that according to the preamble, the Act was made "to provide for the constitution of an Authority for the management of certain aerodromes whereat international air transport services are operated or are intended to be operated and for matters connected therewith", which aspect is affirmed in sub-section (1) of Section 16 which says that "it shall be the function of the Authority to manage the airports efficiently". On the basis of the said provisions learned counsel contends that the vesting of properties in the Authority is only for the purpose of managing those properties and that the ownership of those properties was not vested in the Authority. We are, however, of the opinion that the nature and character of vesting should not be determined with reference to the preamble and sub-section (1) of Section 16 alone but on a totality, i.e., on a conspectus of the provisions of the Act. Section 3(2) says that the authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property both moveable and immovable, and entitled to enter into contracts. It can sue and is liable to be sued in its own name. Section 12, which is the vesting provision does not contain any words of limitation. It vests all properties and other assets vested in the Central Government for the purposes of the airport and administered by the Director General of Civil Aviation immediately before the constitution of the authority in the Authority. All debts, obligations and liabilities incurred, all contracts entered into and all other matters connected with the said properties are also made over to the Authority. Any sums of money due to the Central Government in relation to the airports immediately before such constitution are deemed as amounts due to the authority. Similarly, in respect of all suits and other legal proceedings, the Authority comes in the place of Central Government. The employees concerned are treated as on deputation with the Authority. Section 13 says that any land acquired by the Authority shall be deemed to be needed for public purpose and acquired as such according to law. The Authority is empowered to enter into contracts by itself. The Authority has its own fund into which any sub-ventions made by the Central Government are deposited. The Central Government can also advance loans to the Authority on such terms and conditions as it may determine. The surplus income remaining after meeting of the necessary expenditure and after providing for reserves and other requirements, is to be paid over to the Central Government. Section 23 says that the Authority can borrow money from any sources by issue of bonds, debentures and such other instruments as it may deem fit. It has its own accounts which are audited by the Comptroller and Auditor General of India. It has to prepare and publish an annual report every year. Section 31 provides expressly that the Authority shall be deemed to be a company for the purposes of the Income Tax Act, 1961 and its income, profits and gains shall be liable to tax according to the said Act. This is a significant provision as we shall point out in a little while. These several provisions make it clear that the Authority is a distinct juristic entity, having its own properties, fund and employees, and that it is capable of borrowing from any source including from Government of India. The Act expressly makes the Authority liable to pay income tax like any other company and its income arises mainly from the properties vested in it. This fact coupled with the fact that there are no words of restriction in Section 12 does establish conclusively that the properties vested in it under Section 12 - properties which were hitherto owned by the Union of India - cease to be the properties of the Union of India and that the said vesting is neither restricted nor temporary. The vesting is no doubt for ensuring better management of airports but the said purpose underlying the creation of the Authority cannot be read as a restriction or as a ground for curtailing the meaning of vesting.

23. So far as Section 33 is concerned, it is a temporary measure - a regulatory manner - which has to

be taken whenever it is found necessary in public interest. If the Central Government is of the opinion that in public interest, it is necessary or expedient so to do, it can direct the Authority to entrust the management of any airport to the person or persons appointed by it who shall manage the same for the limited period specified in the section subject to and under the orders of the Central Government. At the end of such period, the management of the airport reverts back to the Authority. Similarly, Section 34 provides for supersession of the authority in certain situations, viz., in a grave emergency where the authority is unable to discharge its functions or duties or where the authority has persistently made default in complying with any direction issued by the Central Government as a result of which the financial position of the authority or the administration of the authority has deteriorated or where the circumstances exist which renders it in the public interest so to do. This is another instance of control vested in the Central Government to ensure proper and efficient functioning of the Authority. The Authority can be superseded only for a period not exceeding six months which can, however, be extended for a further period of six months - but not beyond. These are the usual regulatory provisions found in such enactments and in enactments dealing with cooperative societies and panchayat raj institutions.

24. Great emphasis was laid upon clause (c) of sub-section (2) of Section 34 which provides that on supersession of the Authority under sub-section (1) "all property owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the Central Government". This provision, according to the learned counsel, points out the ephemeral nature of 'vesting' of properties of the Union of India in the Authority and is inconsistent with the theory of absolute vesting propounded by the respondents. We are not impressed. It may be seen that once an Authority is superseded under Section 34(1), there is, in law, no Authority. In such a situation, provision has to be made with respect to the properties hitherto vesting in the Authority and clause (c) of sub-section (2) is precisely the provision providing for it. Evidently, Parliament did not wish to vest the properties in the person or persons appointed to manage the affairs of the Authority for a limited period. It is for that reason that the said clause says that during the period of supersession such properties vest in the Central Government which get re-vested in the Authority once it is reconstituted. Indeed, it is suggested by Shri Chatterji, learned counsel appearing for the Dum Dum Municipality that if the properties did never vest in the Authority and had always remained the properties of the Union of India, there was no occasion for clause (c) to say that the properties owned or controlled by the Authority vest in the Union for the said limited period. We need not, however, express any opinion on this submission.

25. It was then argued by the learned counsel for the appellants that Section 34(2)(c) is really consistent with and bears out their theory rather than the case of the respondents. It is pointed out that Section 34(2)(c) uses both the expressions 'owned' and 'controlled', which means respectively the properties owned by it (i.e., acquired/constructed by it after its constitution) and those under its control (i.e., the properties which are owned by the Union of India and placed under the management of the Authority under the provisions of the Act). It is submitted that Parliament used both the expressions to denote both kinds of properties. We cannot agree. Probably, the learned counsel are reading too much into these two words. In any event, Section 34(2)(c) does not use the expression 'managed', as it ought to, if the intention attributed to Parliament by the learned counsel is correct. It uses a different expression "controlled by". It seems to refer to those properties which may not be owned by the Authority but are under its control on the date of supersession. From the said two words in Section 34(2)(c), no inference can be drawn which militates against the entire scheme of the Act.

26. A circumstance common to both Sections 33 and 34, which establishes the distinct identity of

the Authority is the requirement that before taking action under either of the sections, notice has to be given to the Authority to show cause and it has to be heard.

27. There is yet another difficulty in the way of accepting the appellant's submission. The submission logically means that only those properties which are vested by the Central Government in the Authority on the date of its constitution alone will continue to be the properties of the Union. But so far as the properties which have been acquired or constructed after that date by the Authority would be its own properties. It may happen that the properties which have been vested in the authority at its inception have been rebuilt, improved, expanded and developed beyond recognition. How is one to draw the line and where ? Such a distinction would not only be artificial but difficult to operate in practice. The annual report published by the Authority from year to year discloses how the Authority has understood the vesting. A copy of the annual report 1988-89 is placed before us which shows that the Authority claims to be the owner of all the properties without making any distinction between those that were vested in it at its inception and those which have been acquired and/or constructed later. It has also claimed depreciation on all the properties under Section 32 of the Income Tax Act which can be claimed only by the owner of the properties. We are not suggesting that the understanding of the Authority is conclusive on the question. Far from it. The issue has really to be decided on the basis of the provisions of the Act. We referred to the said aspect only to show how the Authority and Union of India have understood the legal position and acted upon it over a period of more than two decades.

28. We may now deal with the submission based upon certain letters of Government of India asserting that all the properties of the Authority are the properties of the Union. The appellants seek to read these letters as constituting a decision within the meaning of Section 12(3). Section 12(3) has been set out in full hereinabove. We may now set out one of the letters relied upon, viz., letter dated 2-1-1981 from the Deputy Secretary to the Government of India to the Chief Secretary, Government of Maharashtra, Bombay which reads :

#"No. W-24011/14/80-AA Date : 2-1-1981.To,The Chief Secretary,Government of Maharashtra,Mantralaya, Bombay.Sub : (i) Non-agriculture assessment on the lands at Bombay Airport under the control of the IAAI. (ii) Payment of municipal taxes to the Bombay Municipal Corporation by the IAAI.##

Sir,

I am directed to say that the International Airports Authority of India, a public sector undertaking under this Ministry, has informed the Ministry that Additional Collector, Bombay Suburban District and the Bombay Municipal Corporation respectively are making non-agricultural assessment and levying municipal taxes on the lands under the control of IAAI at Bombay Airport. Sometime ago, this Ministry received a letter from the Additional Collector, Bombay Suburban District stating that the IAAI is subject to non-agricultural assessment for the lands under its control at Bombay Airport (No. C/Desk/2/8A/826 dt. 3-5-1980).

2. This matter was referred to the Union Ministry of Law, Justice & Company Affairs for legal opinion. A copy of the legal opinion received is enclosed. It may be seen from the legal opinion received that the property vested with the IAAI continues to be the property of the Government of India and is exempt from State taxation.

3. In view of this, it is requested that suitable instructions be issue to the Additional District

Collector, Bombay Suburban District and the Commissioner, Bombay Municipal Corporation not to levy any State tax on the lands under the control of IAAI at Bombay.

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Yours faithfully,

sd/- (Gopal Chaturvedi)

Dy. Secretary to the Govt. of India

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29. The appellants also rely upon a certificate issued by the Government of India addressed to the Managing Director, Hotel Corporation of India, which may also be set out :

#"GOVERNMENT OF INDIAMINISTRY OF CIVIL AVIATION AND TOURISM(Department of Civil Aviation) SARDAR PATEL BHAWAN PARLIAMENT STREET, NEW DELHI. Dated 21-8-1989AV. 18050/67/89-AATo,The Managing Director,Hotel Corporation of India,6th Floor,Centaur Hotel, Bombay Airport,Bombay.Sub : Assessment of property tax.##

Sir,

I am directed to refer to letter No. PRM/202 dated 3rd August, 1989 on the above-noted subject and to certify that Air India is a statutory corporation established under the Air Corporation Act, 1953 by the Government of India and the Hotel Corporation of India is a wholly-owned subsidiary of Air India. Since both Air India and the Hotel Corporation of India are public sector undertakings, the properties of these Corporations are basically vested with the Government of India.

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Yours faithfully,

sd/- (R. N. Bhargava)

Under Secretary to the Govt. of India"

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30. In our opinion, these letters and/or the certificate do not represent a decision within the meaning of Section 12(3) since that sub-section seems to contemplate a dispute between the Union of India and the Authority. No such dispute ever existed. Secondly it cannot bind any of the Municipal Corporations concerned herein for the reason that they were not heard before rendering the said decision. Yet another feature of these letters and certificate is that they do not draw a distinction between properties transferred by the Union of India to the Authority and the properties acquired and/are controlled by the Authority after its constitution. According to the Central Government, all the properties of the Authority are really the properties of the Union - a stand which is not taken by the appellants even.

31. Now, coming to Section 31 of the Act, it states expressly that the Authority shall be a company within the meaning of Income Tax Act, 1961 and shall be liable to tax upon its income, profits and gains. Now, if the properties vested in the Authority by Section 12 continue to be the properties of the Union, the income arising therefrom should also be the income of the Union and not the income of the authority. The dichotomy in the argument of the appellants is understandable. When Section 31 says that the income, profits and gains of the authority shall be liable to tax under the Income Tax Act, it means clearly that it shall be assessed according to the provisions of that Act which includes Section 32 providing for depreciation on the assets from which the income arises. As a matter of fact, the Authority has been claiming and obtaining the benefit of Section 32 of the Income Tax Act, which it could have claimed only if it were the owner of those assets. Having done that over a period of more than twenty years, the Authority cannot now turn round - when it is sought to be taxed under the relevant Municipal Corporation Act - and say that those properties do not belong to it. The shifting stands adopted by the Authority to suit its convenience are too self-evident to call for any emphasis.

32. The decision of the Constitution Bench of this Court in APSRTC v. ITO - a case arising under Article 289 of the Constitution - may be referred to at this stage. The Andhra Pradesh State Road Transport Corporation was constituted under the Road Transport Corporations Act, 1950 with effect from 11-1-1958. Prior to that date, road transport was a department of the Government of Andhra Pradesh and was being run by it. During the period prior to 11-1-1958, the income from road transport was exempt from tax as income of the State Government but once the Corporation was formed, the Income Tax Department took the view that the income earned by the Corporation is liable to tax. Notices were accordingly served upon the Corporation, which questioned the same by way of a writ petition in the Andhra Pradesh High Court. It contended that having regard to the provisions of the Road Transport Corporations Act and in particular Section 30 which provides that the net income of the Corporation should go to the State of Andhra Pradesh, it must be held that the income of the Corporation was really the income of the State Government. This argument was rejected on an examination of the provisions of the Road Transport Corporations Act which are broadly in accord with the provisions of the International Airports Authority Act, 1971. In coming to the said conclusion, the Constitution Bench laid emphasis upon the fact that the Corporation has a separate fund of its own, that it can borrow funds from any source including from the State Government and Central Government and that it can enter into contracts and own property. It held that the mere fact that the Corporation is owned by the State Government or that in all material particulars, its activities are controlled by the State, are of no consequence. Of course, the share capital of the Corporation in that case was held by the State Government and Central Government together and that it also contemplated raising of capital by issue of shares to other parties whereas in the case of the Authority there is no such provision. But the said feature, in our opinion, does in no way whittle down the relevance of the said decision to the facts of the case before us, for the reason that the said fact is not at the core of the decision.

33. There is yet another circumstance which goes to support our conclusion. Parliament has since enacted the Airports Authority of India Act, 1994 (Act 55 of 1994) in supersession of the 1971 Act. We are told that the 1994 Act has come into force on and from 1-4-1995. Section 3 of the Act constitutes an authority called "Airports Authority of India". Sub-section (1) of Section 13 says that on and from the appointed day, the undertakings of the International Airports Authority (i.e., the authority constituted under Section 3 of the 1971 Act) shall be transferred to and vest in the Authority constituted under Section 3 of the 1994 Act. Sub-section (2) of Section 13 makes it clear that the undertaking of the International Airports Authority "... which is transferred to and which vests in the Authority under sub-section (1) shall be deemed to include all assets, rights, powers,

authorities and privileges and all property, moveable and immovable, real or personal, corporeal or incorporeal, present or contingent, of whatever nature and wheresoever situate, including lands, buildings, machinery, equipments, works, workshops, cash balances, capital reserves, reserve funds, investments, tenancies, leases and book debts and all other rights and interests arising out of such property as were immediately before the appointment day in the ownership, possession or power of the International Airports Authority ... in relation to its undertaking whether within or outside India...". No distinction of the nature urged by the learned counsel for the appellants is recognised by sub-section (2) of Section 13 of the 1994 Act.

34. Reference may be made in this connection to the decision of this Court in *Western Coalfields Ltd. v. Special Area Development Authority*. Certain government companies incorporated under the Companies Act, the entire share capital whereof was held/owned by the Government of India claimed exemption from State taxation under Article 285(1) of the Constitution. The said plea was rejected by this Court holding that merely because the entire share capital is owned by the Government of India it cannot be held that companies themselves are owned by the Government of India. It was observed that the companies which are incorporated under the Companies Act have a corporate personality on their own distinct from that of the Government of India and that the lands and buildings are vested in and owned by the companies whereas the Government of India only owns the share capital. Reliance was placed upon certain decisions of this Court including the decision in *APSRTC*. We are of the opinion that the said principle applies equally in the case of a statutory corporation. The statutory corporation is constituted by or under a statute as against the companies (including government companies) which are registered under and governed by Indian Companies Act, 1956.

35. For all the above reasons, we are of the opinion that the International Airports Authority of India is a statutory corporation distinct from the Central Government and that the properties vested in it by Section 12 of the Act cannot be said to have been vested in it only for proper management. After the date of vesting, the properties so vested are no longer the properties of the Union of India for the purpose of and within the meaning of Article 285. The vesting of the said properties in the Authority is with the object of ensuring better management and more efficient operation of the airports covered by the Act. Indeed that is the object behind the very creation of the Authority. But that does not mean that it is a case of limited vesting for the purpose of better management. The Authority cannot, therefore, invoke the immunity created by Article 285(1) of the Constitution. The levy of property taxes by the relevant municipal bodies is unexceptionable.

36. In view of our conclusion in the preceding para, it is unnecessary to go into the other question raised, viz., whether the municipality can levy tax upon the building where it cannot levy tax upon the land upon which the building stands.

37. The Calcutta High Court has expressed a view that not all the land in the possession of the ITDC (pursuant to the licence granted to it by the Authority) is within the limits of the Dum Dum Municipality. Since this finding appears to be not based on any definite material, we leave this question open for decision by the appropriate authorities at the appropriate stage. In any such proceedings, the finding of the High Court aforesaid shall not operate as *res judicata*.

38. For the above reasons, Civil Appeals Nos. 6698-6700 of 1995 [arising out of SLPs (C) Nos. 1176 of 1991, 7882 of 1993 and 5926 of 1991] are dismissed and Civil Appeal No. 6696 of 1995 [arising out of SLP (C) No. 5337 of 1988] is allowed. No costs.

Civil Appeal No. 6701 of 1995 [Arising out of SLP (C) No. 7914 of 1995]

39. Leave granted.

40. This appeal is preferred against the interlocutory order dated 24-3-1995 pending writ appeal. As stated hereinabove, the learned Single Judge had allowed the writ petition filed by the Authority and held that the Bombay Municipal Corporation cannot levy any property taxes upon the property held by the Authority. The Municipal Corporation preferred an appeal against the said order wherein the Division Bench directed the Authority to pay a part of the demand pending disposal of the appeal. It is that order which is questioned in this appeal by the Authority. Having regard to our decision in the matters relating to Delhi and Calcutta, this appeal is liable to be dismissed. It is accordingly dismissed herewith. It is evident that the writ appeal pending in the Bombay High Court is liable to be allowed in the light of this judgment. It is open to the Bombay Municipal Corporation to bring this judgment to the notice of the High Court and have the appeal disposed of. No costs.

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