A

BOLANI ORES LTD. ETC.

v.

STATE OF ORISSA ETC.

September 24, 1974

[P. JAGANMOHAN REDDY, M. H. BEG AND A. ALAGIRISWAMI, JJ.]

B

Motor Vehicles Act, 1939—*S.* 2(18)—*"Adapted for use"—Meaning of—*

Orissa Motor Vehicles Taxation Act, 1930—*S.* 2(c)—*Definition by reference —If amendments or repeal in the Principal Act would affect the provisions in the Act in which they are referred to.*

The appellants who owned Dumpers, Rockers and Tractors claimed that these machines were not liable for registration under s. 22 of the Indian Motor Vehicles Act, 1939 and as such were not taxable under s. 6 of the Bihar and Orissa Motor Vehicles Taxation Act, 1930. The trial court held that the machinery were motor vehicles within the meaning of s. 2(18) of the Motor Vehicles Act and were therefore liable for registration under that Act and so to payment of tax under the Taxation Act. The High Court held that unless it was shown that the vehicles were of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads the vehicles were motor vehicles and that the three types not being motor vehicles were not liable for registration under s. 22 of the Act nor were they subject to payment of tax under the Taxation Act.

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D

Section 2(c) of the Taxation Act adopted the definition of motor vehicle contained in the Motor Vehicles Act. 1914. The Motor Vehicles Act, 1914 was repealed and replaced by the Motor Vehicles Act, 1939. The definition of motor vehicle in s. 2(18) of the Motor Vehicles Act having been redefined the Taxation Act, by the Orissa Amendment Act 2 of 1940 adopted that definition for the purpose of taxation. The Orissa Amendment Act, 1943 re-enacted provisions of ss. 2 to 8 of the Taxation Act as the Amendment Act 2 of 1940 was due to expire. Section 2(18) of the Motor Vehicles Act was amended by Act 100 of 1956. But there was no corresponding amendment in the definition of s. 2(c) of the Taxation Act.

E

It was contended in this Court that under the definition of motor vehicle as it existed prior to amendment or subsequent thereto dumpers, rockers and tractors were not motor vehicles because they were not adapted for use on the road and (2) the definition of motor vehicle in s. 2(c) of the Taxation Act is not a definition by incorporation but only a definition by reference and as such the meaning of motor vehicle for the purpose of s. 2(c) of the Taxation Act would be the same as defined from time to time under ss. 8(2) to 18 of the Motor Vehicles Act.

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HELD : Dumpers and rockers though registrable under the Motor Vehicles Act are not taxable under the Taxation Act as long as they are working solely within the premises of the respective owners. So far as the tractairs are concerned they are neither registrable under the Motor Vehicles Act nor taxable under the Taxation Act. [160 F]

G

A motor vehicle which is not "adapted for use" upon roads to which public have no right of access is not a motor vehicle within the meaning of s. 2(18) of the Act. The words "is adapted for use" have the same connotation as "is suitable" or "is fit" for use on the roads. The meaning of the word "adopted" in s. 2(18) of the Act is itself indicated in entry 57 of List II of the 7th Schedule to the Constitution which confers powers on the State to tax vehicles whether propelled mechanically or not and uses the words "suitable" in relation to its use on the roads. The words "adapted for use" must, therefore, be constructed as "suitable for use". The words "adapted for use"

H

A cannot be larger in their import by including vehicles which are not "suitable for use" on roads. A perusal of the provisions of the Act would justify the conclusion that it is not necessary for other vehicles registered under the Act to be also liable for payment of tax under the Taxation Act. [153 G-A; 151 F-G]

Daley and others v. *Hargreaves* [1961] 1 All E.R. 552, *MacDonald* v. *Carmichael* (1941) S.C. (J) 27, *Maddox* v. *Storer* [1963] 1 Q.B. 451 and *Burns* v. B *Currell* [1963] 2 Q.B. 433, referred to.

(2) The power of taxation under Entry 57 List II cannot exceed the compensatory nature which must have some nexus with the vehicles using the public roads. If the vehicles do not use roads notwithstanding that they are registered under the Act they cannot be taxed. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under s. 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicles Act. 1939 then the intention of the legislature could not have been anything but to C incorporate only the definition in the Motor Vehicles Act as it existed in 1943. as if that definition was bodily written into s. 2(c) of the Taxation Act. If the subsequent Orissa Motor Vehicle Taxation (Amendment) Act 1943 incorporating the definition of "motor vehicle" referred to the definition of "motor vehicle" under the Act as then existing the effect of this legislative method would amount to an incorporation by reference to the provisions of s. 2(18) of the Act in s. 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not D affect the definition of "motor vehicle" in s. 2(c) of the Taxation Act. [155 B; D-E]

The use of the word 'has' in the expression "has the same meaning as in the Motor Vehicle Act, 1939" in s. 2(c) of the Act would justify the assumption that the legislature had intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. [155 F]

In *re. Wood's Estate* (1886)31 Ch.D.607, *Clarke* v. *Bradlaugh* (1888)8 Q.B.D. 63, *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Ltd.* L.R. 58 I.A. 259, *State of Bihar* v. *S. K. Ray* [1966] E Supp. S.C.R. 259 and *Ram Sarup* v. *Munshi and Others* [1963] 3 S.C.R. 858, referred to.

The definition of motor vehicle as existing prior to the 1956 amendment of the Motor Vehicles Act would alone be applicable as being incorporated in the Taxation Act. The intention of Parliament for modifying the Motor Vehicles Act has no relevance in determining the intention of the Orissa Legislature in enacting the Taxation Act. The power of taxation is not in the concurrent List F but in List II and construed as a taxation measure the ambit of it cannot be extended by mere implication. It is possible for both the Acts to co-exist even after the definition of "motor vehicle" in the Act has been amended. [159 B; 158 H]

In the instant case there is evidence to show that the dumpers, rockers and tractairs are exclusively used on the premises of the owners. [159 E]

The machines which are the subject matter of these appeals must be working in their respective mining areas. The mere fact that there is no fence or G barbed wire around the leasehold premises is not conclusive. There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress and egress is kept by guards who also ensure that no unauthorised persons have access to the mining area. [160 DE]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1816 & 1817 of 1968.

H Appeal from the Judgment & Order dated the 30th March, 1967 of Orissa High Court in F.As. Nos. 44 & 45 of 1963.

Writ Petition No. 372 *of* 1974

Petition under Article 32 of the Constitution of India

Civil Appeal No. 336 *of* 1970

Appeal by Special Leave from the Judgment and order dated 28th March 1969 of the Mysore High Court in W.P. No. 226 of 1967.

Lal Narain Sinha, Sol. Gen. of India, A. K. Basu and D. N. Gupta, for the Appellant (In CA. No. 1816/68) and Petitioner in W.P. No. 372/74);

A. K. Basu & D. N. Gupta, for the Appellant (In CAS. Nos. 1817/68);

V. M. Tarkunde, Santosh Chatterjee and R. N. Sachthey, for the Respondents (In CAs. Nos. 1816-1817/68 & W.P. No. 372/74);

Soli J. Sorabjee, Obed Shenio, P. C. Bhartari, Ravinder Narain & K. J. John, for Intervener No. 1;

S. P. Nayar for Intervener No. 2;

S. T. Desai, B. P. Maheshwari and Suresh Seth, for Intervener No. 3;

S. T. Desai, B. P. Maheshwari & Suresh Seth for the Appellant (In CA No. 336/70).

M. Veerappa, for the respondent (In C.A. No. 336/70).

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J.—These appeals raise a common question as to whether Dumpers, Rockers and Tractors are motor vehicles within the meaning of the relevant State Motor Vehicles Taxation Acts, and are accordingly taxable thereunder. Apart from these appeals, Bolani Ores Ltd.—Appellant in Civil Appeal No. 1816 of 1968—has filed a writ petition challenging the constitutional validity of the Bihar and Orissa Motor Vehicles Taxation Act, 1930. The question raised in the writ petition will only arise for determination, if the judgment of the High Court of Orissa is held to be valid otherwise the question of the constitutional validity of the Bihar and Orissa Motor Vehicles Taxation Act (hereinafter referred to as 'the Taxation Act') does not fall for determination as that would be purely academic.

The two Civil Appeals Nos. 1816 of 1968 and 1817 of 1968 arise out of two suits—one filed by Bolani Ores Ltd. and the other by Orissa Minerals Development Company Ltd., respectively, for a declaration that the machineries in their possession which were described in the respective Schedules to the plaints were not liable for registration under s. 22 of the Indian Motor Vehicles Act—hereinafter referred to as 'the Act', and cannot, therefore, be taxed under s. 6 of the Taxation Act. In the suit filed by Bolani Ores Ltd., 8 types of machinery were involved : (1) Shovels, (2) Drill Master, (3) Caterpillar Bulldozers, (4) Rockers, (5) Dumpers, (6) Motor Grader, (7) Tractors and (8) Fargo Truck fitted with serving tank for diesel oil etc. The Trial Court held that all the items of machinery as above mentioned, except item (6) *i.e.* Motor Grader, came within the definition of a

A 'motor vehicle' given in s. 2(18) of the Act, and were therefore liable for registration under s. 22 of the Act as well as payment of taxes under the Taxation Act. Against this decision, First Appeal No. 44 of 1963 was filed in the Orissa High Court. The State did not file any cross appeal against the declaration that item (6) was not taxable. The High Court was of the view that unless it is shown that the vehicle B is of a special type adapted for use only in factories or enclosed premises and incapable of running on any other type of roads or public roads, the vehicles were motor vehicles. It was conceded during the hearing on behalf of the appellant that type (8) Fargo Truck clearly comes within the definition of motor vehicle and likewise the Advocate General conceded that type (2) Ingersoll--Rand-Drill Master cannot be held to be a Motor Vehicle. The High Court accordingly modified C the order of the Trial Court in respect of the types in items (1), (2) and (3). It held that these three types as well as the Motor Grader in item (6) already held by the Trial Court not to be a motor vehicle, were not liable for registration under s. 22 of the Act, nor would they be subject to payment of tax under the Taxation Act.

In the suit filed by Orissa Mineral Development Company Ltd., out of which First Appeal No. 45 of 1963 arose, the plaintiff sought D a declaration that nine types of machinery which it owns were not liable for registration under the Act : Item (1) & (2) being Dumpers, (3) & (3A) Tractors, (4) Caterpillar Trax Cavetror, (5) & (6) Caterpillar Bull-dozers, (7) & (8) Scrapers and (9) Shovel. The Trial Court found on evidence that items (4) to (9) had a sort of crawler mechanism and were not adapted for regular use on the roads. This fact was also admitted by the opposite party. Accordingly it E held that the vehicles in these items did not come within the ambit of the definition of 'motor vehicle' under s. 2(18) and were not liable for registeration under s. 22 of the Act. The case of Dumpers and Tractors items (1) to (3) and (3A), however, was held to stand on a different footing, as these vehicles were adapted for being used on roads for transporting the goods of the plaintiff, though it may be within its own field of operation. The reasons for bringing such vehi- F cles and the tractors within the purview of s. 2(18) of the Act were discussed at some length, and accordingly it was held in both the suits that the vehicle indicated in the respective suit were liable for registration under s. 22 of the Act and for payment of the requisite tax under the Taxation Act.

In these appeals intervention of M/s. Chougle & Co., M/s N.C.D.C. G Ltd. and M/s. Dalmia Cement Ltd. who allege that proceedings taken by them are pending in Courts, was permitted and they are represented by the learned Advocates Soli J. Sorabji, S. P. Nayar and S. T. Desai respectively.

Civil Appeal No. 336 of 1970 is in respect of the Mysore Motor Vehicles Taxation Act—hereinafter called 'the Mysore Act'. The H appellants in this appeal filed a petition under Art. 226 of the Constitution in the High Court of Mysore challenging the demand by the Regional Transport Officer to get the Dumpers registered under the Act failing which they would be committing an offence entailing penal

consequences. The High Court of Mysore, while dismissing the petition, held that the Dumpers can be used for carrying loads even outside the mining area or any other enclosed premises, like any other 'goods vehicle' which is required to be registered under the Act. According to it, what would take the vehicle out of the category of 'motor vehicles' under the Mysore Act is that they must be such as "are incapable of use in any other place for the purpose of transport of goods or passengers", which, in its view, was not "the same thing as saying that if the vehicle is not put to use elsewhere, or used for a special purpose, it must be exempted from registration under section 22 of the Act." It further observed : "The test of purpose, as argued by the learned counsel, does not also, in our view, fall clearly within the purview of the statutory "exemption in section 2(18) of the Act. On the other hand, what is enjoined is that its very design and manufacture must be such as would confine its capability for use only in a factory or enclosed premises." Referring to the case of *M/s. Bolani Ores Ltd.* v. *State of Orissa,*(1) the interpretation placed by the Orissa High Court on the judgment of the Supreme Court in *The State of Mysore* v. *Syed Ibrahim*(2) was not accepted. On this aspect of the Mysore High Court observed :

> "But, it may also be noted that in the decision of the Supreme Court, above referred to, what was in question was whether the owner of a Motor Car, which was used for transporting passengers for hire was liable for prosecution under section 42(1) of the Act. The exemption under section 2(18) did not fall for consideration in the said decision. It was in this context that the Supreme Court laid down that if a Motor Vehicle is used as a transport vehicle, the owner who so uses it or permits it to be so used is required to obtain the necessary permit. It is the use of the vehicle for carrying passengers for hire or reward which determines the application of section 42(1) of the Act."

The High Court, however, agreed with the test laid down by the Orissa High Court for determining what under the Motor Vehicles Act is a 'motor vehicle'.

The decision in these appeals hinges on the view we take of what a 'motor vehicle' is for the purpose of s. 2(c) of the Taxation Act under which the motor vehicle has the same meaning as in the Motor Vehicles Act, 1939, and whether the subsequent amendment of the definition in s. 2(18) of the Act by the Motor Vehicles (Amendment) Act, will govern the definition of 'motor vehicle' for the purposes of the Taxation Act. Section 6 of the Taxation Act imposes on every motor vehicle a tax at the rate specified in the Second Schedule to the Act. The question, therefore, arises as to what is a 'motor vehicle' for the purposes of the Taxation Act. It may be pointed out that s. 2(c) of the Taxation Act, prior to its amendment in 1940, defined a 'motor vehicle' as meaning any vehicle propelled, or which may be propelled, on a road by electrical or mechanical power either entirely

(1) A. I.R.1958 Orissa 1. (2) [1967] 2 S. C. R. 673.

A or partially. In 1939 the Motor Vehicles Act of 1914 was repealed and a new Act substituted in its place. The 1914 Act defined 'motor vehicle' as including "a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially." The Orissa Act, therefore, initially adopted the definition in the Taxation Act, which was in consonance with the Motor Vehicles Act, as it then stood. The definition of 'motor vehicle' under s. 2(18) of the Act having been redefined, the Taxation Act by the Orissa Amendment Act 2 of 1940 adopted that definition for the purposes of taxation. The preamable to this amendment stated that the amendment was made for the purpose of avoiding repugnancy in the Motor Vehicles Act, 1939. The Orissa Amendment Act of 1943 re-enacted provisions of ss. 2 to 8 of the said Act, as the Amendment Act 2 of 1940 was due to expire on November 23, 1943. Section 2(18) of the Act was, however, amended by Act 100 of 1956 but there was no corresponding amendment in the definition of s. 2(c) of the Taxation Act. It is, therefore, contended that the amended definition is inapplicable to the Taxation Act, but it is only the definition of a 'motor vehicle' as it existed under the Act prior to the amendment that has to be read in s. 2(c) of the Taxation Act, inasmuch as the purpose and intendment of the Legislature was only to incorporate the definition as it existed at the time when the Taxation Act was amended in 1943. If it was otherwise, following the legislative practice adopted earlier by the Orissa Legislature, the definition of a 'motor vehicle' would have been suitably amended in order to avoid any repugnancy with the amendment. Apart from this contention, it is also submitted that under the definition as it existed prior to the amendment or subsequent thereto dumpers, rockers and tractors are not 'motor vehicles', because they are not adapted for use on the road.

Before we deal with this question it is necessary to note the preliminary objection raised by the learned Advocate for the State of Orissa that the appellants should not be permitted to raise this question as it was not pleaded or urged either before the Trial Court or before the High Court, nor is there any evidence to determine the question whether the vehicles, on which the levy of the impugned tax is held to be valid, are used solely upon the premises of the owners. It is submitted that the contention is contrary to what is stated in the plaint and that it is also not covered by any of the issues under which the question as to whether the premises in which the plaintiffs operate are the exclusive premises of the plaintiffs, nor is there any evidence as to whether the area where the vehicles operate is the exclusive area of the plaintiffs.

In our view, the preliminary objection has no validity, because, firstly, in para 2 of the plaint it is definitely pleaded : "That for the specific purpose of mining operations within their leasehold areas, they possess Caterpillar Bulldozers Model D.S.....Letourneau Westinghouse Dumpers and Euclid Dumpers...Motor Grader...Tractors... Fargo Truck" etc. "These machines are mechanically propelled but are neither intended nor adapted for use on public roads nor are ever used by the plaintiffs on public roads or public places." Secondly,

the relief asked for is that the machines in possession of the plaintiffs as described above for the purpose of working in the mines and removing over burdens are not liable for registration and consequent payment of taxes under the Taxation Act. Thirdly, the written statement clearly comprehends what the plaintiffs' case is. It is categorically stated in para 4 that "the various types of machines enumerated in para 2 of the plaint being mechanically propelled vehicles come within the definition of motor vehicles as contained in section 2(18) of the Act since they do not come under the exceptions provided therein. It is incorrect to say that these vehicles are neither intended nor adapted for use on public roads, nor are ever so used by the plaintiffs on public roads or public places. On the contrary the places where the aforesaid machines are operating are public places within the meaning of section 2(24) of the Motor Vehicles Act since the public are granted the right of access to the same for transacting day to day business." Fourthly, issues Nos. 4 and 5, viz. "Are the suit vehicles not 'motor vehicles' within the provisions of Motor Vehicles Act?" and "Are the suit vehicles liable for registration and taxation?" respectively give scope for the question now raised. Lastly, the evidence also which has been led by the plaintiffs, and to which we shall have occasion to refer later entitles the appellants to raise this question. For these reasons, we reject the preliminary objection.

It is now necessary to compare the two definitions of 'motor vehicle' under s. 2(18) of the Act both before and after the amendment by Act 100 of 1956. We, therefore, give below both these definitions :

Section 2 (18) before amendment.	Section 2 (18) after amendment by Act 100 of 1956
"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or *used solely upon the premises of the owner.*	"motor vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or *a vehicle of a special type adapted for use only in a factory or in any other enclosed premises.*

It will be observed from a comparison of the two definitions that the vehicles which have been taken out of the category of a 'motor vehicle' are different in these two definitions. Before the amendment a motor vehicle though a motor vehicle within the meaning of the first part of the definition is nonetheless not so, because of its specified user, *i.e.* if it is used solely upon the premises of the owner. These vehicles under s. 6 of the Taxation Act read with s. 2(c) thereof would not attract liability to tax. But after the amendment though a motor vehicle may be adapted for use upon roads, nonetheless in order to be taken out of the category of the definition it had to be further adapted, namely, it should be a vehicle of a special type adapted for use only in a factory or in any other enclosed premises. In other

A words, a motor vehicle of a special type adapted as stated in the post amendment definition would be such as would not be considered to be adapted for use upon roads.

The position is the same with respect to the Motor Vehicles Taxation Acts of other States also. We have seen the Mysore Motor Vehi-
B cles Taxation Act, 1957, which though does not define "motor vehicle" as such, nonetheless under s. 2(j) states that words and expressions used but not defined in the Act shall have the meanings assigned to them in the Motor Vehicles Act, 1939. It also says that the Mysore General Clauses Act, 1899 (Mysore Act III of 1899) shall apply for the interpretation of the Act, as it applies for the interpretation of a Mysore Act. Section 3 is the taxing provision which provides that a
C tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on roads, kept in the State of Mysore.

In the Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act, 1931, s. 2(i) states that the expressions mentioned in clauses (a) to (f), of which clause (d) refers to 'motor vehicle', shall have the
D meanings assigned to them in the Motor Vehicles Act, 1939. It is also pertinent to mention that the Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act by s. 2(v) defines a 'public road' and by s. 4 which is the taxing provision it is provided that the State Government may, by notification in the Official Gazette, from time to time direct that a tax shall be levied on every motor vehicle using any public road in the Andhra area of the State of Andhra Pradesh.

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The Madras Act uses the same language as that of the Andhra Pradesh (Andhra Area) Act. It appears that using any public road in the Presidency of Madras was first substituted for the words "kept or used in the Presidency of Madras" by s. 3(i) of the Madras Motor Vehicles Taxation (Amendment) Act, 1932 (Madras Act V of 1932).

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The Bombay Motor Vehicles Tax Act, 1958 follows the same pattern as the Mysore Act and though it does not define a 'motor vehicle', yet, by s. 2(10) it provides that other words and expressions used, but not defined, in the Act shall have the meanings respectively assigned to them in the Motor Vehicles Act, 1939.

G The Bengal Motor Vehicles Tax Act, 1932, also is similar as that of the Bombay Act inasmuch as s.2(5) thereof states that words and expressions used, but not defined, in the Act shall have the same meaning as in the Motor Vehicles Act, 1939.

In all these cases the common question would be whether the definition of a 'motor vehicle' as it existed before the Amendment Act
H of 1956 is the same as in s. 2(c) of the Taxation Act or does the definition in s. 2(c) of the Taxation Act mean that the motor vehicle as defined in the Act from time to time is to be adopted for the purpose of s. 2(c) of the Taxation Act. In so far as the larger question is

concerned, as to whether dumpers, rockers and tractors are motor vehicles at all within the meaning of the first part of the definition of 'motor vehicle' in s. 2(18) of the Act, which is the same before and after the amendment, it is contended that these vehicles are not suitably adapted for use upon roads, which according to the learned Advocates mean the public roads or roads to which the public has a right of access. The Motor Vehicles Taxation Acts are enacted in exercise of the powers conferred on the State Legislatures under entry 57 of List II of the Seventh Schedule to the Constitution, while the Motor Vehicles Act is enacted by the Parliament in exercise of the concurrent legislative power in entry 35 of List III of the Seventh Schedule to the Constitution. Entry 57 of List II empowers legislation in respect of taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III. The power exercisable under entry 57 is the power to impose taxes which are in nature of regulatory and compensatory measures. The regulatory and compensatory nature of the tax is that the taxing power should be exercised to impose taxes on motor vehicles which use the roads in the State or are kept for use thereon either throughout the whole area or parts thereof and are sufficient to make and maintain such roads : See *The Automobile Transport (Rajasthan) Ltd.* v. *The State of Rajasthan and others.*(1) In this case, the earlier decision in *Atiabari Tea Company Ltd.* v. *The* State *of Assam and others*(2) was considered. Since the taxing statute is a regulatory or compensatory statute, it is contended that the provisions of ss. 6B, 7, 9A of the Taxation Act relate only to the actual use of the public road. It is pointed out that s. 6 of the Taxation Act does not place the burden of taxation on the registered owners of the motor vehicles, but only on the persons who keep the motor vehicles for use which would mean use their on the public roads. If no such use of public roads is made or the vehicles are not such as can be used on the public roads, then no tax could be levied under the Taxation Act. Reference in the Taxation Act to the registered owners is, it is submitted, meant only for the purpose of enabling refund of tax paid but not payable in terms of the Act, or s. 7 of the Taxation Act. Under Entry 35 of the Concurrent List, the Parliament as well as the State Legislatures can legislate in respect of *only* mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. It has no power to deal with vehicles which are not mechanically propelled though under the Taxation Act these non-mechanically propelled vehicles which are suitable for use on roads can also be taxed even without their being registered under the Act. It will thus be seen that while entry 57 of List II is solely concerned with taxes on vehicles whether mechanically propelled or not, entry 35 deals with also the principles on which taxes on such vehicles are to be levied. Taxes on vehicles cannote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression 'principles of taxation' denote rules of guidance in the matter of taxation. The ambit and amplitude of these two legislative entries in the respective Lists was dealt with in *State of Assam & Others*

A B C D E F G H

(1) [1963] 1 S. C. R. 491. (2) [1961] 1 S. C. R. 809.

A v. *Labanya Probha Debi*,(1) where Suba Rao, C.J., speaking for the Constitution Bench of this Court observed at p. 614:

> "The two entries deal with two different matters though allied ones—one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. when two entries in the Constitution, whether in the same
B List or different Lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. We, therefore, hold that the Amending
C Acts do not come into conflict with the existing law in respect of any principles of taxation, but only deal with a subject-matter which is exclusively within the legislative competence of the State Legislature."

It is contended that having regard to the nature of the vehicles in question they are particularly suitable for the functions they are per-
D forming and unsuitable for the roads on which they would be only a source of damage, inconvenience, danger and uneconomical compared with the other vehicles usually utilised for transport of goods. Accordingly it is submitted that: (1) the present case should be determined with reference to the definition of 'motor vehicle' read without the amendment in the Act, as such vehicles operating solely within the appellants' premises should not be liable to tax; (2) the vehicles not
E being suitable for public roads would not be either registered or taxed whether before or after 1956. Both for the purposes of registration and taxation the common question arises, *viz.*, whether the vehicles in question are adapted for use upon roads, which, it is submitted, are public roads or roads to which public have a right of access. If they are not, then they are not 'motor vehicles' within the meaning of either the Act or the Taxation Act; (3) the concept 'adapted for use on
F roads' must lie within the ambit of the expression used by the Constitution; otherwise it would be unconstitutional. It must, therefore, follow that the definition can only refer to vehicles which are reasonably suitable for the road in the sense that an average man could think that plying of the vehicles on the road would be one of the normal uses of the vehicles. That alone would be a test of suitability; and (4) for the interpretation of s. 22 of the Act it would be permissible and even
G obligatory to examine the section not in isolation but in the light of the object and scheme of the Act and the regulatory provisions regarding the licensing of drivers, issuing of permits, provisions for compulsory registration and other regulatory provision are confined to the vehicles on the public roads. The provisions of s. 22 are definitely to advance the objects of the Act and to effectuate the regulatory provisions. By the very language the principal purpose is to insist upon
H registration in respect of vehicles plying in public places. Further, the

(1) [1967] 3 S. C. R. 611.

expression must be interpreted to advance the object of the Act exactly as the other para of s. 22 does. In this view the expression "purpose of carrying passengers or goods" cannot mean the personal use of the owner. A person himself cannot be the passenger and goods, and as such it must not be interpreted disjunctively. It is a single expression "passenger or goods". It is conceivable that this alternative part of the section is only to ensure that in connection with the journey on a public road even if a motor vehicle goes into a place which will not be strictly a public place like hotel or inside a railway, such as in a Railway Station, or even inside the premises of a bus depot, hospitals, etc. provisions for compulsory registration should be applicable. The judgment of the High Court is assailed on the ground that while formulating the test to determine whether a vehicle is adapted for use on the roads it has evidently equated compatibility with suitability, because at certain places it has laid down the test in terms of compatibility and at other places in terms of suitability. This is clearly illustrated by its decision regarding 'tractor'. A tractor without a trailor can neither carry passengers nor goods. In the instant case, it is said that the tractor cannot ply in a public place, nor does it ply in any other place for carrying passengers or goods. It could not evidently fall within s. 22 of the Act. Though this is so, the High Court says that because it can be adapted by attaching a trailor, it comes within s. 2(18), forgetting that what we are concerned with is a tractair without a trailor which is actually used to supply compressed air to certain plants or machines, which clearly shows that the High Court did not have a correct concept of "adapted for use on road".

Shri Soli Sorabji on behalf of the interveners has more or less adopted a similar line of argument and has referred us to the several dictionary meanings of the word 'adapted'. He has also referred to the English cases on this question and submitted that no vehicle can be taxed unless it possessses the attribute of being "suitable for use on roads". The expression "adapted for use on roads" must be construed as suitable for use on roads in the light of entry 57; otherwise, the legislation would be *ultra vires* the said entry, and consequently such a construction should be avoided by courts. He further submitted that the Orissa High Court has misconstrued the judgment of the Supreme Court in *State of Mysore* v. *Syed Ibrahim*,(1) where the observations were made with reference to the definition of "a public service vehicle" as defined in s. 2(25) of the Act, under which user by itself was sufficient to bring the vehicle within its purview. He has referred us to ss. 47(f), 55(f), 71(2), 74, 75(1) and (3) and 77 of the Act in support of his proposition that having regard to the general object, purpose and the policy underlying the Act the expression "roads" must mean public roads and not private roads. If so, the dumpers, rockers and tractors etc. which do not ply or are not suitable for plying on public roads cannot be either registered under the Act or taxed under the Taxation Act.

Mr. Tarkunde for the State of Orissa submits that every motor vehicle registered under the Act is liable to pay tax under the Taxation Act and since dumpers, rockers and tractors are by their nature

(1) [1967] 2 S. C. R. 673.

A adapted for use on the roads they are registerable, and they have to be registered and are liable for payment of tax under the Taxation Act. There has been a good deal of argument on both sides on the meaning of the expression "adapted for use upon roads". We have been referred to certain English decisions which deal with the meaning of the word 'adapted' in the English Road Traffic Act, 1960. While
B the definition of 'motor vehicle' in the Act describes it as a mechanically propelled vehicle adapted for use upon roads, the English Road Traffic Act describes it as a mechanically propelled vehicle "intended or adapted for use on roads". Even the earlier English Road Traffic Act, 1930, had used the words "intended or adapted for use on roads", while making Part I applicable to motor vehicles.

In *Daley and others* v. *Hargreaves*(1) the Queen's Bench Division
C took the view that as there was no evidence sufficient to show that the dumpers were "intended or adapted for use on roads" within the meaning of s. 36 of the Road and Rail Traffic Act, 1933, and s. 1 of the Road Traffic Act, 1930, and the case being indistinguishable in substance from the Scottish decision in *MacDonald* v. *Carmichael*(2) which the Court would follow for conformity, it had not been established that dumpers were motor vehicles to which the regulations
D applied. In *MacDonald's case*(2) it was held that the dumpers were solely used in connexion with road construction and were not constructed to carry goods on an ordinary highway. They were so constructed as to be capable of, and were in fact occasionally used for, carrying road-making material along short stretches of the public highway in the vicinity of the work of reconstruction. The ratio of that decision was applied to the *Daley's case*,(1) where Salmon, J. observ-
E ed at p. 555 :

> "In my judgment, the true effect of the Court of Justiciary's decision was that the very limited use of the dumpers on the road in that case did not establish, that they were "intended or adapted for use on the road", within the meaning of those words in the Road Traffic Act, 1930, s. 1."

F Lord Parker, C.J., though agreeing reserved his opinion by emphasising that it must not be taken as the result of this decision that dumpers of the type used in this case were not motor vehicles intended or adapted for use on the road. He indicated that he had agreed with Salmon, J., merely because there was no proof in that case that the dumpers used were motor vehicles.

G While dealing with the English cases it must not be forgotten that the definition of "motor vehicle" in the Road Traffic Act imports the element of intention into the definition for ascertaining whether a vehicle is a motor vehicle. In *Maddox* v. *Storer*,(3) Lord Parker, C.J., was construing the word "adapted" when used disjunctively with "constructed". He observed at p. 456 :

> H "One can get illustration after illustration, on looking at the Act itself, where "adapted," when used disjunctively with

(1) [1961] 1 All E. R. 552. (2) [1941] S. C. (J) 27.
(3) [1963] 1 Q. B. 451.

A

> "constructed" must mean a physical alteration, and, as it seems to me, other cases where the word "adapted" alone is used and where it must be given the adjectival meaning of being fit and apt for the purpose."

But where the word "adapted" alone has been used such as in sub-paragraph (2) of paragraph 1 of the First Schedule to the Road Traffic Act, 1960, he was of the view that it was wholly inapt to mean "altered so as to make fit". He asked "How do you alter a motor-car so as to make it fit to carry not more than seven passengers"? It is clearly there standing on its own, subsceptible only of meaning "fit and apt for the purpose."

B

In *Burns* v. *Currell*(1) also Lord Parker delivered the judgment. He referred to the decision in *Daley, MacDonald Maddox* (supra) observed at p. 440 thus :

C

> "But to define exactly the meaning of the words "intended or adapted" is by no means easy. I think that the expression "intended", to take that word first, does not mean "intended by the user of the vehicle either at the moment of the alleged offence or for the future". I do not think it means the intention of the manufacturer or the wholsaler or the retailer;"

D

After referring to Salmon, J.'s observations in *Daley's case* (*supra*) and the suggestion that the word "intended" might be paraphrased as "suitable or apt" Lord Parker pointed out that it may be merely a difference of wording, but he preferred to make the test whether a reasonable person looking at the vehicle would say that one of its users would be a road user, and then he dealt with the meaning of the word "adapted" and observed at p. 441 :

E

> "So far as the other word, "adapted," is concerned, as was pointed out in *Maddox* v. *Storer*—(1963) 1 Q.B. 451—the word "adapted" is used throughout the Road Traffic Act, 1960, in a number of different contexts. Sometimes it is used as an alternative to "constructed"—"constructed or adapted," and it seems clear, and indeed it has been so held for a very long time, that "adapted" there means altered.
>
> On the other hand, as it was pointed out in *Maddox* v. *Storer*, it is used in other contexts in this Act, in particular when it stands alone, as clearly meaning "apt" or "fit", in other words in an adjectival sense.
>
> Here in this context of intended or adapted my own view is, though I think it is perhaps unnecessary to decide it in this case, that "adapted," used disjunctively with "intended" and not with the word "constructed," is used in its adjectival sense."

F

G

The decisions rendered on the definition of 'motor vehicle' under the English Road Traffic Act are of little help, because that definition

H

(1) [1963] 2 Q. B. 433.

A has reference to the words "intended or adapted", while the element of intention has no relevance under the Act, where the word "adapted" alone is used. It has been urged before us that since the learned Chief Justice Lord Parker had referred to the meaning of the words "intended" and "adapted" separately in the context of the English Road Traffic Act, we should take assistance from his observations. It appears to us that where two words of different import are used which B in the context of the scheme of the Act and its purpose play an important part, to ask us to take the meaning given of one of the words and import it as the meaning for the purposes of the Act even when the same word is used, is perhaps to place us in a similar predicament as that of the gentleman who when asked to expound on Chinese metaphysics, not knowing how to begin looked up the article on China in the Encyclopaedia Britannica and also on metaphysics and combined C the two into Chinese metaphysics.

As usual references have been made to the Dictionaries but quite often it is not possible to hold a dictionary in one hand and the statute to be interpreted in the other for ascertaining the import and intent of the word or expression used by the Legislature. The shade of meaning of a word, its different connotations and collocations which one D finds in a dictionary does not relieve us of the responsibility of having to make the ultimate choice of selecting the right meaning. We choose that meaning which is most apt in the context, colour and diction in which the word is used. The use of a dictionary *ad lib* without an analysis of the entire Act, its purpose and its intent, for ascertaining the meaning in which the Legislature could have used the word or expression may not lead us to the right conclusion. With this caution E before us for avoiding any of the aforesaid methods which might lead to a possible incongruity, we will examine the different facets to which our attention has been drawn.

The meaning of the word "adapted" in s. 2(18) of the Act is itself indicated in entry 57 of List II of the Seventh Schedule to the Constitution, which confers a power on the State to tax vehicles whether propelled mechanically or not and uses the word "suitable" in rela- F tion to its use on the roads. The words "adapted for use" must therefore be construed as "suitable for use". At any rate, words "adapted for use" cannot be larger in their import by including vehicles which are not "suitable for use" on roads. In this sense, the words "is adapted" for use have the same connotation as "is suitable " or "is fit" for use on the roads.

G The question would then arise, are dumpers, rockers and tractairs suitable or fit for use on roads ? It is not denied, that these vehicles are on pneumatic wheels and can be moved about from place to place with mechanical power. The word "vehicle" itself connotes that it is a contrivance which moves. A vehicle which merely moves from one place to another need not necessarily be a motor vehicle within the meaning of s.2(18) of the Act. It may move on iron flats made into H a chain such as a caterpillar vehicle or a military tank. Both move from one place to another but are not suitable for use on roads. It is not that they cannot move on the roads but they are not adapted, made fit or suitable for use on roads. They would, if used, dig and

damage the roads. It is contended that the dumpers or rockers are very heavy and though they can move on roads they would damage the roads and, therefore, they are not suitable for use on roads. To substantiate this proposition the appellants have produced before us certain notifications issued by the State of Orissa under which vehicles beyond a certain laden weight are prohibited from plying on the roads. It was rightly pointed out by the learned Advocate for the State of Orissa that there are only some of the roads on which vehicles heavier than what is indicated in the notification cannot be permitted. But that is not to say that all vehicles which exceed a particular weight are not adapted for use upon roads and are, therefore, not motor vehicles. A dumper in the Mysore case according to the manufacturer's own specifications is suitable for roads and is described thus :

> "The dumper will carry : bulk goods, building materials, mining products, agricultural and forestry products, earth, stones, bricks, concrete, mortar, etc.
>
> The structure is of simple design and easy to handle. Tripping is performed by releasing the locking device retaining the tipping body.
>
> . . . . . .
>
> The dumper requires no more than a few seconds for the emptying of its tipping body and gives no trouble to the driver when being operated on uphill or downhill roads, with its load unbalanced, or when the load refuses to slide out easily.
>
> . . . . . .
>
> Quickness and ease characterise the operation of the dumper and the clumsy manoeuvring can be dispensed with. In narrow lanes or rough roads where turning would be impossible or undesirable, the seat is turned and will face driving direction."

It is also averred in the plaint in the suit filed by the appellant Bolani Ores Ltd. that Euclid Dumpers are used for transporting ore from the mining faces to the crushing and screening plant or from head mine stockpile to near railway siding. Rockers also seem to be similar to dumpers. But in this case rockers are heavier than dumpers.

In so far as the tractairs are concerned, attachments are fitted for the purpose of supplying compressed air to Jack Hammer Drills which are used to drill holes in the ore body so that explosive charges may be inserted in them to break the ore into manageable sizes. In respect of all these three types of vehicles it cannot be said that they are not adapted for use upon roads. That they are not so used or are confined for use to only places other than roads or public places is a different matter, because whether they have to be registered under the Act or are liable for payment of tax under the Taxation Act will depend upon the provisions of the respective Acts.

In so far as the Act is concerned, we must bear in mind that it is essentially an Act to regulate transport. The statement of objects and

A reasons given for the 1939 Act, in so far as it is relevant for our purpose states thus :

> "It has been recognised now for some years past that the Indian Motor Vehicles Act, 1914 which was framed to suit conditions at an early stage of development of motor transB port, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interest alike of the safety and convenience of the public and of the development of a so-called system of transport, much closer control is required than the present Act permits, and it is necessary to take powers to regulate transport."

C

A perusal of the provisions of the Act, in the light of the objects and reasons, would justify the conclusion that it is not necessary for every vehicle registered under the Act to be also liable for payment of tax under the Taxation Act. It may be that a vehicle is registerable under the Act but not liable for tax under the Taxation Act. For instance s. 22 of the Act provides : "No person shall drive any motor vehicle D and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered..... ....." Similarly under s. 3 of the Act "No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to himself authorizing him to drive the vehicle, and no person shall so drive a motor vehicle as a paid employee or shall so E drive a transport vehicle unless his driving licence specifically entitles him so to do." A 'motor vehicle' under s. 2(18) has been defined as "any mechanically propelled vehicle adapted for use upon roads..... ....." Having regard to the context of the definition of "public place" in s. 2(24) of the Act, the regulatory character of the Act, and the use of the word 'road' used in a public Act, road would mean a "public road" which word as already noticed has been used in the F Andhra Pradesh (Andhra Area) Motor Vehicles Taxation Act. The word "public place" has been defined in s. 2(24) as meaning "a road, street, way or other place "whether a thoroughfare or not, to which the public have a right of access". If the public have no right of access to any place which is not a road, street, way or thoroughfare it will not be a public place. A motor vehicle which is not adapted for use upon roads to which the public have no right of access is not a G motor vehicle within the meaning of s. 2(18) of the Act. But where a vehicle is adapted for use on a road which is neither more nor less than that it is made suitable or fit for use upon road, i.e. public roads, it is a motor vehicle, and if such a motor vehicle is a goods vehicle under s. 2(8) which means a vehicle which is not only suitable or fit for use upon roads but is "constructed or adapted for use for the carriage of goods" or where it is not so constructed or adapted when H used for the carriage of goods solely or in addition to passengers, or is a public service vehicle within the meaning of s. 2(25) of the Act, namely " any motor vehicle used or adapted to be used for the

carriage of passengers for hire or reward.....", it has to be registered under s. 22 and can only be driven by a person who holds a licence under s. 3 of the Act. Where a vehicle is adapted for use upon roads and though it is not driven on the public roads or in a public place even then if it carries goods or passengers which may not be for hire or reward or the passengers may be friends or relatives of the owner or the goods may belong to the owner and plying in a place to which the public has, as a matter of right, no access, it nonetheless cannot be driven without its being registered or without the driver holding a licence to drive such a vehicle. A B

In so far as the Act is concerned, having regard to the fact that the dumpers and rockers are motor vehicles which are not taken out of that category, as was the case before the amendment, they have to be registered after the amendment and can only be driven by persons holding a valid licence. The tractair though it may be a motor vehicle within the definition of that term is neither a goods vehicle nor a vehicle which carries passengers nor is it being driven in a place to which public have as a right access. As it does not perform any of the aforesaid functions or uses it is not a vehicle which has to be registered nor has it to be driven only by a person who holds a licence. C D

The question then remains as to whether these vehicles though registrable under the Act are motor vehicles for the purpose of the Taxation Act. It has already been pointed out that before the amendment vehicles used solely upon the premises of the owner, though they may be mechanically propelled vehicles adapted for use upon roads were excluded from the definition of 'motor vehicle'. If this definition which excludes them is the one which is incorporated by reference under s. 2(c) of the Taxation Act, then no tax is leviable on these vehicles under the Taxation Act. Shri Tarkunde for the State of Orissa contends that the definition of 'motor vehicle' in s. 2(c) of the Taxation Act is not a definition by incorporation but only a definition by reference, and as such the meaning of 'motor vehicle' for the purpose of s. 2(c) of the Taxation Act would be the same as defined from time to time under s. 2(18) of the Act. In ascertaining the intention of the Legislature in adopting the method of merely referring to the definition of 'motor vehicle' under the Act for the purpose of the Taxation Act, we have to keep in mind its purpose and intendment as also that of the Motor Vehicles Act. We have already stated what these purposes are and having regard to them the registration of a motor vehicle does not automatically make it liable for taxation under the Taxation Act. The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under entry 57 List II of the Seventh Schedule read with Art. 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated. The regulations under the Motor Vehicles Act for registration and prohibition of certain categories of vehicles being driven by persons E F G H

A who have no driving licence, even though those vehicles are not plying on the roads, are designed to ensure the safety of passengers and goods etc. etc. and for that purpose it is enacted to keep control and check on the vehicles. Legislative power under Entry 35 of List III (Concurrent List) does not bar such a provision. But Entry 57 of List II is subject to the limitations referred to above, namely, that the power of taxation thereunder cannot exceed the compensatory nature which B must have some nexus with the vehicles using the roads, viz. public roads. If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed. This very concept is embodied in the provisions of s. 7 of the Taxation Act as also the relevant sections in the Taxation Acts of other States, namely, that where a motor vehicle is not using the roads and it is declared C that it will not use the roads for any quarter or quarters of a year or for any particular year or years, no tax is leviable thereon and if any tax has been paid for any quarter during which it is not proposed to use the motor vehicle on the road, the tax for that quarter is refundable. If this be the purpose and object of the Taxation Act, when the motor vehicle is defined under s. 2(c) of the Taxation Act as having the same meaning as in the Motor Vehicle Act, 1939, then the intention of the Legislature could not have been anything but to incorpo- D rate only the definition in the Motor Vehicles Act as then existing, namely, in 1943, as if that definition was bodily written into s. 2(c) of the Taxation Act. If the subsequent Orissa Motor Vehicles Taxation (Amendment) Act, 1943, incorporating the definition of 'motor vehicle' referred to the definition of 'motor vehicle' under the Act as then existing, the effect of this legislative method would, in our E view, amount to an incorporation by reference of the provisions of s. 2(18) of the Act in s. 2(c) of the Taxation Act. Any subsequent amendment in the Act or a total repeal of the Act under a fresh legislation on that topic would not affect the definition of 'motor vehicle' in s. 2(c) of the Taxation Act. This is a well-accepted interpretation both in this country as well as in England which has to a large extent influenced our law. This view is further reinforced by the use of the F word has in the expression "has the same meaning as in the Motor Vehicles Act, 1939" in s. 2(c) of the Taxation Act, which would perhaps further justify the assumption that the Legislature had intended to incorporate the definition under the Act as it then existed and not as it may exist from time to time. This method of drafting which adopts incorporation by reference to another Act whatever may have been its historical justification in England, in this country does not G exhibit an activistic draftsmanship which would have adopted the method of providing its own definition. Where two Acts are complimentary or interconnected, legislation by reference may be an easier method because a definition given in the one Act may be made to do as the definition in the other Act both of which being enacted by the same Legislature. At any rate, Lord Esher, M.R., dealing with legislation by incorporation, in *In re. Wood's Estate state*(1) said at p. 615:

H "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has

(1) [1886] 31 Ch. D. 607.

A

often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."

The observations in *Clarke* v. *Bradlaugh*(1) are also to the same effect. Brett, L.J., in that case had said at p. 69 : B

"..... there is a rule of construction that, where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third statute does not affect the second."

In *Secretary of State for India in Council* v. *Hindusthan Co-operative Insurance Society Ltd.*(1) the Privy Council was considering a C case where the incorporation effected in the statute, viz., the Calcutta Improvement Trust Act, 1911—referred to by their Lordships as the "Local Act" was in express terms and in the form illustrated by 54 and 55 Vict., Ch. 19. The "Local Act" in dealing with the acquisition of land for the purposes designated by it, made provision for the acquisition under the Land Acquisition Act, and the provisions of the D Land Acquisition Act were subjected to numerous modifications which were set out in the Schedule, so that in effect the "Local Act" was held to be the enactment of a Special Law for the acquisition of land for the special purpose. It was in the context of these and several other provisions which pointed to the absorption of certain of the provisions of the Land Acquisition Act into the "Local Act" with vital modifications that Privy Council observed at p. 266 : E

"But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the Local Act of 1911. It was not part of the Land Acquisition Act when the F Local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the Local code. Nor again, does Act XIX of 1921 con- G tain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at H length the provisions which it was desired to adopt."

(1) [1881] 8 Q. B. D. 63. (2) L. R. 58 I. A. 259.

A It was further observed at p. 267 :

> "In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second : see the cases collected in Craies on Statute Law, 3rd edn. pp. 349, 350. This doctrine finds expression in a common-form section
B which regularly appears in the amending and repealing Acts which are passed from time to time in India. x x x x x x The independent existence of the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principles involved is as appli-
C cable in India as it is in this country.
>
> It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be
D deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

This Court in *The Collector of Customs, Madras* v. *Nathelle Sampethu Chetty and Another*(1) considered the Privy Council decision in the *Hindusthan Co-operative Insurance Society Ltd.*(2) and distinguished
E that case and held the principle inapplicable to the facts of that case.

In *State of Bihar* v. *S. K. Roy*(3) this Court was considering the definition of "employer" in s. 2(e) of the Coal Mines Provident Fund and Bonus Schemes Act, 1948, where that expression was defined to mean "the owner of a coal mine as defined in clause (g) of section 3
F of the Indian Mines Act, 1923". The Indian Mines Act, 1923, had been repealed and substituted by the Mines Act, 1952 (Act 35 of 1952). In the latter Act the word "owner" had been defined in cl. (1) of s. 2. The question was whether by virtue of s. 8 of the General Clauses Act, the definition of the word "employer" in cl. (e) of s. 2 of the Coal Mines Provident Fund and Bonus Schemes Act should be construed with reference to the definition of the word "owner" in
G cl. (1) of s. 2 of Act 35 of 1952, which repealed the earlier Act and re-enacted it. It may be mentioned that according to s. 2(1) of Act 35 of 1952 the word "owner", when used in relation to a mine, means "any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator or receiver ....." The expression "coal mine" is separately
H defined in cl. (b) of s. 2 of the Coal Mines Provident Fund and Bonus

(1) [1962] 3 S.C.R. 786, at pp. 830-833. (2) L.R. 58 I.A. 259.
(3) [1966] Supp. S.C.R. 259.

Schemes Act, 1948. Ramaswami, J., speaking for the Court observed at p. 261 : A

> "As a matter of construction it must be held that all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to a coal mine will come within the scope and ambit of the definition only when they belong to the coal-mine. In other words, the word "or" occurring before the expression "belonging to a coal mine" in the main definition has to be read to mean "and"." B

This case, as well as the decision in *New Central Jute Mills Co. Ltd.* v. *The Assistant Collector of Central Excise, Allahabad & others*,(1) are distinguishable on the facts and legislation which this Court was considering. In the *New Central Jute Mills Co. Ltds.*(1) case, the Privy Council decision in the *Hindusthan Co-operative Insurance Society Ltd.'s* case (supra) was referred to and distinguished. It is, however, contended by the learned Solicitor General that both in *Nathella Sampathu Chetty's* case (supra) as well as the *New Central Jute Mills Co. Ltd.'s* case(1) this Court was considering the effects of the two Acts which were made by Parliament by central legislation and it is, therefore, not strictly a case of incorporation because the Central Legislature is deemed to have, while making the latter enactment, kept in view the provisions of the former Act. In our view this may not be conclusive. C D

In *Ram Sarup* v. *Munshi and Others*(2) a judgment of the Bench of five Judges of this Court held that the repeal of the Punjab Alienation of Land Act, 1900, had no effect on the continued operation of the Punjab Pre-emption Act, 1913, and that the expression "agricultural land' 'in the later Act had to be read as if the definition of the Alienation of Land Act had been bodily transposed into it. After referring to the observations of Brett, L.J., in *Clarke's* case (supra), Rajagopala Ayyangar, J., speaking for the court observed at pp. 868-869 : E

> "Where the provisions of an Act are incorporated by reference in a later Act the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which its provisions have been incorporated. F
>
> x x x x x x
>
> In the circumstances, therefore, the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it." G

The above decision of this Court is more in point and supports our conclusion. In our view, the intention of Parliament for modifying the Motor Vehicles Act has no relevance in determining the intention of the Orissa Legislature in enacting the Taxation Act. Apart from H

(1) [1971] 2 S.C.R. 92. (2) [1963] 3 S.C.R. 858.

this aspect the power of taxation, as we have said earlier, is not in the Concurrent List III but in List II and construed as a taxation measure we cannot extend the ambit of it by mere implication. As we said it is possible for both the Acts to co-exist even after the definition of 'motor vehicle' in the Act has been amended. It is, therefore, clear that the definition of 'motor vehicle' as existing prior to 1956 Amendment would alone be applicable as being incorporated in the Taxation Act.

Mr. Tarkunde has referred to s. 6 of the General Clauses Act, 1897 in support of his contention that after the amendment the amended definition would apply to the Taxation Act. But we do not think that there is any justification for this submission. Section 6 of the General Clauses Act, 1897, specifically refers to that Act, or any Central Act or Regulation made after the commencement of the General Clauses Act and states that if these Acts repeal any enactment, hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect the matters specified in clauses (a) to (e) of that section. Since the Taxation Act is a State Act neither s. 6 nor s. 6A of the General Clauses Act has any relevance. That Act has to be interpreted in the light of the Orissa General Clauses Act and since there is no question of any amendment or any repeal of any of the Orissa Acts affecting the Taxation Act, s. 7 of the Orissa General Clauses Act has also no relevance. If so, the question is whether these vehicles were used solely upon the premises of the owner. On this aspect, there can be no doubt, because there is evidence to show that dumpers, rockers and tractaires (tractors with air compressed attachment) are exclusively used on the premises of the owners.

In Civil Appeal No. 1816 of 1968 P. W. 1 Assistant Superintendent of Mines, Bolani Ores Ltd., stated that there is no public road within their leasehold premises. No member of public is allowed to enter into leasehold premises without due permission obtained before hand. They have check-gates on the approach road to their leasehold. All the machines are within leasehold and never outside it. In cross-examination, no doubt he admitted that the leasehold has no fence. He, however, stated that there is an official approach road to the plant. He also stated in cross-examination that there is a gate book, gate register and a security guard. From this evidence it is clear that though there is no fence, there are check gates, and the public are not allowed to enter into the leasehold without prior permission and the machines are used within the leasehold premises. The mere fact that there is no fence does not mean that the leasehold premises are not enclosed premises. It is obvious that no one can get into the leasehold premises without having to go through the gate for which gate book, gate register and security guard are provided.

In Civil Appeal No. 1817 of 1968—Orissa Mineral Development Company's case, P. W. 1 stated in his evidence that the dumpers in the schedule were to carry ores from the place of excavation in the railway wagon within the mining area. The members of the public have no right to enter into it. There are check gates and guards.

P. W. 2 stated in his evidence that the suit vehicles were used at the place of mining operations. The members of the public have no access to the mining area. There were ten to twelve guards around the mining area and there were also guards at the gates of the approaching road. The guards were to prevent the unauthorised persons to enter into the mining area and there was a duty chart of those guards. No doubt, P. W. 4 stated in his evidence that the area within which the machines were used was neither fenced nor walled around.

Similarly in Civil Appeal No. 336 of 1970 in the case of Dalmia Cement Bharat Ltd it has been stated in the reply affidavit in paragraph 4 that a "trench 4'×4'×2' is dug alround the mining area so as to prevent free ingress and egress to the mining area. Certain pit areas are fenced with barbed wire. In fact to avoid accidents, particular area where dumpers are being used have necessarily to be fenced. This is required under the Mining Act and Rules framed thereunder." In reply to paragraph 4 it has been stated by the respondent that the allegations of the deponent in paragraph 4 of his affidavit except the allegation that the mining area is a well defined and enclosed area are substantially correct.

From the very nature of the area operated by these three companies it is obvious that the machines which are the subject-matter of these appeals must be working in their respective mining areas. The mere fact that there is no fence or the barbed wire around, the leasehold premises is not conclusive. There is evidence to show that the public are not allowed to go inside without prior permission, there are gates and a check on ingress and egress is kept by guards who also ensure that no unauthorised persons have access to the mining area, all of which indicate that the respective mining areas are enclosed premises within the meaning of the exceptions under s. 2(c) of the Taxation Act.

In the result Civil Appeal 336/70 is dismissed with cost and other appeals are partly allowed and it is held that dumpers and rockers though registrable under the Act are not taxable under the Taxation Act as long as they are working solely within the premises of the respective owners. So far as the tractairs are concerned they are neither registerable under the Act nor taxable under the Taxation Act. The appellants will get proportionate costs.

As we have held that these machines are not taxable the question about the constitutional validity of the Taxation Act challenged by Writ Petition No. 372 of 1974 filed by Bolani Ores Ltd. would become academic and need not be considered. The writ petition is accordingly dismissed but without costs.

P.B.R.

C.A.336/70 *and* W.P. 372/74 *dismissed*
C. A. 1816-1817/68 *partly allowed.*