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WESTERN COALFIELDS LTD.

v.

SPECIAL AREA DEVELOPMENT AUTHORITY, KORBA AND ANR.

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November 26, 1981

[Y.V. CHANDRACHUD, C.J. AND D.A. DESAI, J]

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Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (23 of 1973), S 69(d), Madhya Pradesh Municipalities Act 1961, S. 127A and Madhya Pradesh Municipal Corporation Act 1956, Ss. 135, 136.

Property Tax—Levy of—Whether special Area Development Authority has all the powers of taxation which a Municipal Corporation or Municipal Council has—Whether incorporation of earlier Act in a later Act or reference to the powers conferred by earlier Acts.

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Constitution of India 1950, Act 285(1), M.P. Municipalities Act 1961, s. 147 Expln. and M.P. Municipal Corporatian Act 1956, s. 141—Property tax on leased lands—Land owned by State Government—Taken on lease by Company—Entire share capital of company subscribed by Central Government—Liability to payment of property tax—Whether arises.

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Coal Mines Nationalisation Act 1973, s. 5, Mines & Mineral (Regulation and Development) Act 1957 s. 2 and M.P. Nagar Tatha Gram Nivesh Adhiniyam 1973, s. 69(d)—Power conferred on State Legislature to impose property tax whether in conflict with the power to regulate and develop coal mine conferred by Nationalisation Act.

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The Madhya Pradesh Municipalities Act, 1961 by S. 127 (1) (i) empowered a municipal council to impose, in the whole or any part of the municipality, "a tax payable by the owners of houses, buildings or lands situated within the limits of Municipality with reference to annual letting value of the house, building or land called property tax". The corresponding provision in the Madhya Pradesh Municipal Corporation Act, 1956 was section 132(1)(a), and it provided that "the Corporation shall impose a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the building or land called the property tax". The procedure for imposition of taxes was spelt out in section 129 of the Municipalities Act and section 133 of the Municipal Corporation Act. Section 127A was inserted in the Municipalities Act for imposition of property tax and provided by sub-clause (1) that as and from the financial year 1976-77 there shall be charged, levied and paid for each financial year a tax on the lands or buildings or both situated in a municipality at specified rates. Sub-clause (2) exempted properties owned by or vesting in the Union Government, State Government or the Council from the levy. Similar

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A provisions were inserted in sections 135 and 136 of the Municipal Corporation Act.

Respondent No. 1 was constituted the Special Area Development Authority under section 65 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (23 of 1973). Clauses (c) and (d) of section 69 of the Act conferred upon the Development Authority powers for the purpose of municipal administration and B for the purpose of taxation. These clauses were inserted by Ordinance 26 of 1975 which came into force on February 27, 1976. The Ordinance was replaced by the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam 1976 (6 of 1976).

On June 24, 1976 respondent 1 entered into an agreement with the appellant company under which the company agreed to contribute a sum of rupees 3 lakhs C annually to the "seed capital" of the Authority in consideration of the Authority agreeing not to exercise its power of taxation or of levying any other charges on the assets and activities of the company. The agreement was to remain in force for a period of ten years beginning from the calendar year 1976 and the annual payments due from 1977 were to be made in January every year. The appellant company paid the contribution for the year 1976. In the same year the company was called upon by the Sales Tax authorities to pay "the tax on the entry of D goods" which was introduced by the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhyadesh 1976 in substitution of octroi tax. While the company was pursuing that matter with the State Government, contending that it was not liable to pay the entry tax by reason of the agreement, on January 4, 1977 respondent 1 made a further demand of Rs. 3 lakhs on the company for contribution for the year 1977 That amount not having been paid as provided in the agreement, respondent 1 terminated the agreement by its letter dated E February 4, 1977.

By a notice issued under section 65 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam 'Act of 1973' on February 21, 1977 and by another notice issued under section 164(3) of the Madhya Pradesh Municipalities Act 1961 on April 15, 1977, the Chief Executive Officer of respondent 1 called upon the company to pay a sum of about Rs. 13 lakhs by way of property tax for the F year 1976-77. On July 16, 1977 the company was called upon to pay a further sum of about Rs. 13 lakhs as property tax for the year 1977-78.

The company disputed its liability to pay on the ground that no tax was leviable on its property since the company was owned wholly by the Government of India and that respondent 1 was estopped from levying the property tax by reason of the agreement of 1976. Having failed to pursuade respondent 1 to G accept its point of view, and also having failed in the High Court the appellant-company came to this Court in appeal.

In the appeals to this Court it was contended : (1) that respondent 1 can exercise only such powers to levy property tax as the Municipal Corporation or the Municipal Council had under the Madhya Pradesh Municipal Corporation H Act, 1956 or the Madhya Pradesh Municipalities Act, 1961 as these Acts stood on February 27, 1976, when clause (d) was inserted in section 69 of the Act of 1973. Section 127A and section 135 which create and levy the charge of property

tax having been inserted in the Municipalities Act and the Municipal Corporation Act respectively with effect from April 1, 1976 i.e. subsequent to the insertion of clause (d) in section 69 of the Act of 1973, Respondent 1 was incompetent to exercise the powers of the Municipality or the Municipal Corporation under section 127A of the Municipal Corporation Act or section 136 of the Municipal Corporation Act; (2) that respondent 1 cannot impose the property tax without following the procedure prescribed by section 129 of the Municipalities Act and section 133 of the Municipal Corporation Act; (3) that Article 285(1) of the Constitution envisages that the property of the Union shall save in so far as Parliament may by law otherwise provide be exempt from all taxes imposed by a State or by any authority within a State. Section 127A(2) of the Madhya Pradesh Municipalities Act and section 136 of the Madhya Pradesh Municipal Corporation Act also provide that the property tax shall not be leviable, on "buildings and lands owned by or vesting in the Union Government". The appellant companies being wholly owned by the Government of India, the lands and buildings owned by the companies cannot be subjected to property tax; (4) that the lands having been taken on lease for a period of 30 years by the appellant companies, it is the State Government and not the appellant companies who can be called upon to pay the tax; and (5) that Parliament enacted the Coal Mines Nationalisation Act, 1973 for acquisition of coal mines and utilisation of coal resources to subserve the common good. The lands and buildings on which respondent 1 had imposed the property tax are used for the purposes of and are covered by coal mines. The taxing power of the State legislature comes in conflict with the power and function of the Union to regulate and develop the mines as envisaged by the Nationalisation Act, and is an impediment since it substantially increased the cost of the developmental activities.

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Dismissing the appeals,

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HELD : (i) Section 69(d) of the Act of 1973 must be read to mean that respondent 1 shall have all the powers of taxation which a Municipal Corporation or a Municipal Council has at the time when respondent 1 seeks to exercise those powers. [14 A]

(ii) The Act of 1973 does not provide for any independent power of taxation or any machinery of its own for exercising the power of taxation. It rests content by referring to the provisions contained in the two Municipal Acts. The three Acts are supplemental, from which it must follow that amendments made to the earlier Acts after the enactment of section 69(d) shall have to be read into that section. Without recourse to such a construction the power of taxation conferred by that section will become ineffectual. [14 B-C]

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(iii) A reading of the referenee to the two earlier Municipal Acts as a reference to those Acts as they stand at the time when the power of taxation is sought to be exercised by respondent 1 will not cause repugnancy between the two earlier Acts on one hand and the Act of 1973 on the other, nor will it cause any confusion in the practical application of the earlier Acts, because the Act of 1973 does not contain any independent provision or machinery for exercising the power of taxation. [14 D]

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A (iv) If an earlier legislation is incorporated into a later legislation, the provisions of earlier law which are incorporated into the later law become a part and parcel of the later law. Therefore, amendments made in the earlier law after the date of incorporation cannot by their own force, be read into the later law. That is because the legislature, cannot be assumed to intend to bind itself to all future amendments or modifications which may be made in the earlier law. [12 D-E]

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(v) Where a statute is incorporated by reference into a second statute, the repeal of the first statute by a third does not affect the second. Likewise, 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 deemed to be incorporated in it. [12G-13A]

C (vi) The broad principle that where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act, is subject to four exceptions, one of which is that the principle will not apply to cases "where the subsequent Act and the previous Act are supplemental to each other". [13 D]

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Secretary of State for India in Council v. *Hindustan Co-operative Insurance Society, Limited,* 58 Indian Appeals, 259, *Clarke* v. *Bradlaugh,* [1881] 8 Q.B.D. 63 69; *Collector of Customs, Madras* v. *Nathella Samathu Chetty & Anr.,* [1962] 3 S.C.R. 786 and *State of Madhya Pradesh* v. *M. V. Narasimhan,* [1976] 1 SCR 6, referred to.

In the instant case, subsequent amendments made to the Municipal Corporation Act and the Municipalities Act will also apply to the power of taxation provided for in section 69(d) of the Act of 1973. The Act of 1973 did not by section 69(d), incorporate in its true signification any particular provision of the two earlier Acts. It provided that, for the purpose of taxation, the Special Area Development Authority shall have the powers which a Municipal Corporation or a Municipal Council has under the Madhya Pradesh Municipal Corporation Act, 1956 or the Madhya Pradesh Municipalities Act, 1961. The case, therefore, is not one of incorporation but of mere reference to the powers conferred by the earlier Acts. [13 E-F]

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2(i) Section 127A of the Municipalities Act and section 135 of the Municipal Corporation Act create by their own force, the liability to be brought to property tax and the right to levy that tax. Nothing further is required to be done by the Municipality or the Municipal Corporation in order to impose the property tax. The procedure preliminary to the imposition of other taxes which is prescribed by sections 129 and 133 of the two Acts, can have no application to the imposition of the property tax. [14 F-15 A]

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(ii) The property tax is imposed by respondent 1 under section 127A of the Municipalities Act and section 135 of the Municipal Corporation Act. It is not imposed under section 127 of the former Act or section 132 of the latter Act. It is, therefore, not necessary to follow the procedure prescribed by sections 129 and 133 of the respective Acts. [15 B-C]

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3. Even though the entire share capital of the appellant companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings, are vested in and owned by the companies; the Government of India only owns the share capital. [16 A-B]

Rustom Cavasjee Cooper v. *Union of India,* [1970] 3 S.C.R. 530, 555, *Heavy Engineering Mazdoor Union* v. *The State of Bihar,* [1969] 3 S.C.R. 995, *Andhra Pradesh State Road Transport Corporation* v. *The Income-tax Officer & Anr.* [1964] 7 S.C.R. 17 & *Tamlin* v. *Hansaford* [1950] K.B. 18 referred to.

4. The Explanation to section 147 of the Municipalities Act says that the property tax has to be paid by the owner of the land or building and that a tenant of land or building or both, who holds the same under a lease for an agreed period, shall be deemed to be the owner thereof. Section 141(1) of the Municipal Corporation Act provides that the property tax shall be paid primarily by the owner. By sub-section (2) of section 141, the property tax levied on the owner can also be recovered from the occupier of the land or the building.[18D-E]

5(i) The power conferred by the State Legislature on Special Area Development Authorities to impose the property tax on lands and buildings is not in conflict with the power conferred by the Coal Mines Nationalisation Act on the Union Government to regulate and develop coal mines so as to ensure rational and scientific utilisation of coal resources. [21 G]

(ii) The paramount purpose behind the declaration contained in section 2 of the Mines and Minerals (Regulation and Development) Act, 1957 is not in any manner defeated by the legitimate exercise of taxing power under section 69(d) of the Act of 1973. [21 H-22A]

H.R.S. Murthy v. *Collector of Chitoor and Another,* [1964] 6 S.C.R. 666, *State of Haryana & Anr.* v. *Chanan Mal* [1976] 3 SCR 688 and *The Ishwari Khetan Sugar Mills (P) Ltd.* v. *The State of Uttar Pradesh & Ors.* [1980] 3 SCR 331 referred to.

Baijnath Kedia v. *State of Bihar & Ors.* [1970] 2 S.C.R. 100, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1025-26 of 1978.

Appeals by special leave from the judgment order dated the 15th April, 1978 of the Madhya Pradesh High Court in Misc. Petition Nos. 61 and 62/78 respectively.

With

Civil Appeal No. 213 of 1979

A Appeal by special leave from the judgment and order dated the 15th April, 1978 of the Madhya Pradesh High Court in Misc. Petition o. 555 of 1977.

L. N. Sinha, Attorney General, *R. B. Datar* and *Miss A. Subhashini* for the Appellants.

B

Y. S. Dharamadhikari, N. M. Ghatate and *S. V. Deshpande* for the Respondent.

Y. S. Chitale, Suresh Sethi and *S. K. Bhattacharya* for the applicant intervener Municipal Corpn. of Delhi.

C *Altaf Ahmed* for the applicant intervener J & K State Agro. Industrial Corpn. Ltd.

S. K. Gambhir for the applicant intervener State of M.P.

The Judgment of the Court was delivered by

D CHANDRACHUD, C.J. These appeals by special leave involve the question of the legality of the demand for Property-tax made by respondent 1 on the appellant Companies. Civil Appeal No. 213 of 1979 filed by the Bharat Aluminium Company Ltd. arises out of Misc. Petition No. 555 of 1977 filed by it in the High Court of E Madhya Pradesh under Article 226 of the Constitution. Respondent 1 is the Special Area Development Authority, Korba, District Bilaspur, M.P., respondent 2 is its Chairman and respondent 3 is the State of Madhya Pradesh. Since the three appeals raise similar questions, we will refer to the facts of Civil Appeal No. 213 of 1979 only. Civil Appeals Nos. 1025 and 1026 of 1978 are by Western Coalfields F Ltd.

The appellant, Bharat Aluminium Company Ltd., is a Government Company incorporated under the Companies Act, 1956, the entire share capital being owned by the Government of India. Respondent 1, the Special Area Development Authority for the G Korba Special Area, is constituted under section 65 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam (23 of 1973), referred to hereinafter as 'the Act of 1973'. That Act was passed by the Madhya Pradesh Legislature in order "to make provision for planning and development and use of land; to make better provision for H the preparation of development plans and zoning plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to constitute Town

and Country Planning Authority for proper implementation of town and country development plan; to provide for the development and administration of special areas through Special Area Development Authority; to make provision for the compulsory acquisition of land required for the purpose of the development plans and for purposes connected with the matters aforesaid". Chapter VIII of the Act, consisting of sections 64 to 71, is entitled "Special Areas". Section 64 empowers the State Government to declare any area as a special area by issuing a notification. Section 55 provides that for every Special Area there shall be a Special Area Development Authority consisting of a Chairman and such other members as the Government may determine from time to time. The Chairman and the members of the Development Authority are appointed by the Government. Section 68, which prescribes the functions of the Development Authority, lays down by clauses (v) and (vi) that the Development Authority shall make provision for the municipal services and municipal management of the Special Area. Section 69, by clauses (c) and (d), confers upon the Development Authority powers for the purpose of municipal administration and for the purpose of taxation. These two clauses of section 69 and clauses (v) and (vi) of section 68 were inserted in their present shape by Ordinance 26 of 1975 which came into force on February 27, 1976. The Ordinance was replaced by the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodhan) Adhiniyam, 1976 (6 of 1976).

Section 69(d) of the Act of 1973 reads thus :

"69. Powers : The Special Area Development Authority shall

(d) for the purpose of taxation have the powers which is municipal corporation or a municipal council has, as the case may be, under the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956) or the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961),

(a) where the municipal corporation of municipal council existed in such area prior to its designation as special area under section 64, according to the municipal law by which such special area was governed, and

(b) where no municipal corporation or municipal council existed in such area prior to its designation as special area under section 64, according to such of the aforesaid Acts as the State Government may direct."

A Clauses (a) and (b) above are sub-clauses of clause (d). (They should better have not been so numbered alphabetically since the main clauses themselves are similarly numbered).

Since there was no Municipal Corporation or Municipal Council in the Korba Special Area prior to the constitution of the B Development Authority, the Government was required under sub-clause (b) above to direct whether the Madhya Pradesh Municipal Corporation Act, 1956, or the Madhya Pradesh Municipalities Act, 1961, shall apply to the Korba Special Area for the purposes of clauses (v) and (vi) of section 68 and clauses (c) and (d) of section 69. Such a direction was first issued by Notification dated C January 28, 1976 published in the Government Gazette, dated February 27, 1976 by which the Development Authority, Korba, was directed to exercise the powers and perform the functions of a Class I Municipality constituted under the Madhya Pradesh Municipality Act, 1961. This Notification became effective from February 27, 1976 from which date Ordinance No. 26 of 1975 was made effec- D tive. By another Notification, dated March 15, 1977, published in Government Gazette, dated July 15, 1977, the Development Authority, Korba, was directed under the aforesaid clauses of sections 68 and 69 to exercise the powers and perform the functions under the Madhya Pradesh Municipal Corporation Act, 1956.

E Section 127(1)(i) of the Madhya Pradesh Municipalities Act, 1961 empowers a municipal council to impose, in the whole or any part of the municipality, "a tax payable by the owners of houses, buildings or lands situated within the limits of Municipality with reference to annual letting value of the house, building or land called property tax". The corresponding provision in the Madhya F Pradesh Municipal Corporation Act, 1956 is section 132 (1)(a). It says that "the Corporation shall impose a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the building or land called the property tax". The procedure for imposition of taxes is contained in section 129 of the Municipalities Act and section 133 of the Municipal G Corporation Act.

In 1964, the Madhya Pradesh State Legislature had enacted the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, which was made applicable to the whole State, including the urban H areas. By section 36 of the aforesaid Adhiniyam, local authorities were prohibited from recovering the property tax from November 24, 1970.

Towards the beginning of 1976, the Government decided to abolish octroi tax and to impose in its place a 'tax on the entry of goods'. To compensate the municipal councils and the municipal corporations for the loss arising from the abolition of the octroi tax, the Government decided to confer powers on these bodies for levying property tax. For conferring powers to levy tax on the entry of goods in place of octroi tax, the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhyadesh, 1976 (6 of 1976) was promulgated. For conferring powers to levy property tax, Ordinance No. 4 of 1976 was promulgated. Both of these Ordinances were published in the Madhya Pradesh Gazette, dated April 30, 1976 from which date they came into force. Ordinance No. 4 of 1976 inserted certain provisions in the Municipalities Act and the Municipal Corporation Act. This Ordinance was replaced by Act No. 50 of 1976. By section 1(2) of that Act, the provisions inserted in the Municipalities Act and the Municipal Corporation Act, with which we are concerned, were deemed to have come into force with effect from April 1, 1976. Section 127A which was inserted in the Mnnicipalities Act for imposition of property tax reads as follows, in so far as relevant :

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> "127A. (1) Notwithstanding anything contained in this chapter, as and from the financial year 1976-77, there shall be charged, levied and paid for each financial year a tax on the lands or buildings or both situate in a municipality other than class IV municipality at the rate specified in the table below :
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> |---|---|---|
> | (i) | where the annual letting value exceeds Rs. 1,800 but does not exceed Rs. 6,000. | 6 per centum of the annual letting value. |
> | (ii) | X X X X X X X | |
> | (iii) | X X X X X X X | |
> | (iv) | X X X X X X X | |
> | (v) | where the annual letting value exceeds Rs. 24,000 | 20 per centum of the annual letting value |
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> (2) The property tax levied under sub-section (1) shall not be leviable in respect of the following properties, namely :

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A (a) building and lands owned by or vesting in

(i) the Union Government;

(ii) the State Government;

(iii) the Council."

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Similar provisions were inserted in sections 135 and 136 of the Municipal Corporation Act.

On June 24, 1976, respondent 1 (the Special Area Development Authority, Korba) entered into an agreement with the appellant C Company under which the Company agreed to contribute a sum of Rupees three lakhs annually to the "seed capital" of the Authority in consideration of the Authority agreeing not to exercise its power of taxation or of levying any other charges on the assets and activities of the Company under the Act of 1973 as amended from time to time or under any other Act or notification. The agreement was D to remain in force for a period of ten years beginning from the calendar year 1976 and the annual payments due from 1977 were to be made in January every year. The appellant Company paid the contribution for the year 1976 as agreed. In the same year, the Company was called upon by the Sales Tax authorities to pay the tax on entry of goods which was introduced in substitution of the E octroi tax. While the Company was pursuing that matter with the State Government, contending that it was not liable to pay the entry tax by reason of the aforesaid agreement, on January 4, 1977 respondent 1 made a further demand of Rs. 3 lakhs on the Company for contribution for the year 1977. That amount not having been paid as provided in the agreement, respondent 1 terminated the F agreement by its letter dated February 4, 1977. The Company sent a cheque for Rs. 3 lakhs to respondent 1 on April, 28, 1977.

By a notice issued under section 65 of the Act of 1973 on February 21, 1977 and by another notice issued under section 164(3) G of the Madhya Pradesh Municipalities Act 1961 on April 15, 1977, the Chief Executive Officer of respondent 1 called upon the Company to pay a sum of Rs. 13,22,160 by way of property tax for the year 1976-77. By a letter dated May 21, 1977 respondent 1 reduced the demand by Rs. 3 lakhs being the amount paid by the Company by H way of contribution for the year 1977, under the agreement of 1976. On July 16, 1977 the Company was called upon to pay a further sum of Rs. 13,65,673.50 as property tax for the year 1977-78.

The appellant Company disputed its liability to pay the aforesaid amounts on the grounds, principally, that no tax was leviable on its property since the Company was owned wholly by the Government of India and that respondent 1 was estopped from levying the property tax by reason of the agreement of 1976. Having failed to persuade respondent 1 to accept its point of view, the Company filed o Writ Petition in the Madhya Pradesh High Court asking that the demands be quashed. Civil Appeal No. 213 of 1979 by special leave is directed against the dismissal of the Writ Petition.

In the other two appeals (Nos. 1025 and 1026 of 1978), the appellant, Western Coalfields Ltd., is also a hundred per cent undertaking of the Government of India. That Company has been called upon by respondent 1 to pay property tax for the years 1976-77 and 1977-78 in the sum of Rs. 3,71,461 for each year. The Writ Petitions (61 and 62 of 1978) filed by it were dismissed by the High Court, following the judgment delivered in the Writ Petition filed by the Bharat Aluminium Company Ltd.

Civil Misc. Petitions Nos. 13211 of 1979 and 3767 of 1980 are for intervention by the Jammu and Kashmir State Agro Industries Corporation Ltd. and the Delhi Municipal Corporation respectively. The Delhi High Court has held in L.P.A. 105 of 1979 that the Delhi Municipal Corporation has the power to levy property-tax on the property of the Jammu and Kashmir State Agro Industries Corporation Ltd., whose share capital is owned by the State of Jammu and Kashmir and the Union of India in the proportion of 51% and 49% respectively. In Special Leave Petition No. 10688 of 1979 filed against the judgment, the question raised is whether the property of a public corporation owned wholly by the State Government and the Union Government is exempt from taxes by reason of articles 285 and 289 of the Constitution. We have allowed both the parties to intervene in these appeals.

The learned Attorney General, who appears on behalf of the appellants, has raised four or five principal points, any one of which, if accepted, will result in the success of these appeals. However, we are unable to accept any of these.

The first contention of the learned Attorney General is that respondent 1 can exercise only such powers to levy property tax as the Municipal Corporation or the Muncipal Council had under the Madhya Pradesh Municipalities Corporation Act, 1956, or the Madhya Pradesh Municipalities Act, 1961, as these Acts stood on

A February 27, 1976, when clause (d) was inserted in its present form in section 69 of the Act of 1973. It is urged that the provisions conferring powers of taxation under the aforesaid two Acts must be taken to have been incorporated in section 69(d) of the Act of 1973 and any subsequent change in those provisions by amendment of the two Acts cannot be availed of by respondent 1. Section 127A and B section 135 which, by their own force, create and levy the charge of property tax were inserted in the Municipalities Act and the Municipal Corporation Act respectively with effect from April 1, 1976, that is, subsequent to the insertion of clause (d) in section 69 of the Act of 1973. Relying on this, it is argued that respondent 1 was incompetent to exercise the powers of the Municipality or the C Municipal Corporation under section 127A of the Municipalities Act or section 135 of the Municipal Corporation Act.

The answer to this contention will depend mainly upon whether the provisions of the Municipalities Act and the Municipal Corporation Act were incorporated into the Act of 1973 by its section 69(d). D It is well-settled that if an earlier legislation is incorporated into a later legislation, the provisions of earlier law which are incorporated into the later law become a part and parcel of the later law. Therefore, amendments made in the earlier law after the date of incorporation cannot, by their own force, be read into the later law. E That is because the legislature, which adopts by incorporation the existing provisions of another law, cannot be assumed to intend to bind itself to all future amendments or modifications which may be made in the earlier law. In other words, the incorporating Act does nothing more than borrow certain provisions of an existing Act and instead of setting out, verbatim, those provisions in its own creation, F refers to them as a matter of convenience in the mode of drafting. (See *Secretary of State for India in Council* v. *Hindustan Co-operative Insurance Society Limited*;(1) Craies on Statute Law, 7th Edition, pages 360-361.)

The principle, broadly, is that where a statute is incorporated G by reference into a second statute, the repeal of the first statute by a third does not affect the second (see *Clarke* v. *Bradlaugh*).(2) Likewise, logically, 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,

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(1) 58 Indian Appeals 259.
(2) [1881] 8 Q.B.D. 63, 69.

can be deemed to be incorporated in it. (see *Secretary of State for India in Council* v. *Hindusthan Cooperative Insurance Society Ltd*). (supra) But these rules are not absolute and inflexible. In the case last cited, the Privy Council qualified its statement of the law by saying that the principle, that an amendment of the first law which is not expressly made applicable to the subsequent incorporating Act cannot be deemed to be incorporated into the second Act, applies "if it is possible for the subsequent Act to function effectually without the addition" (page 267). Besides, as held by a Constitution Bench of this Court in the *Collector of Customs, Madras* v. *Nathella Samathu Chetty & Anr.*(1) the decision of the Privy Council could not be extended too far so as to cover every case in which the provisions of another statute are adopted by absorption (see page 837). Finally, in *State of Madhya Pradesh* v. *M. V. Narasimhan*(2) this Court held, after an examination of the relevant decisions, that the broad principle that where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act, is subject to four exceptions, one of which is that the principle will not apply to cases "where the subsequent Act and the previous Act are supplemental to each other".

Applying these principles, we are of the opinion that in the instant case, subsequent amendments made to the Municipal Corporation Act and the Municipalities Act will also apply to the power of taxation provided for in section 69(d) of the Act of 1973. The Act of 1973 did not, by section 69(d), incorporate in its true signification any particular provision of the two earlier Acts. It provides that, for the purpose of taxation, the Special Area Development Authority shall have the powers which a Municipal Corporation or a Municipal Council has under the Madhya Pradesh Municipal Corporation Act, 1956 or the Madhya Pradesh Municipalities Act, 1961. The case therefore is not one of incorporation but of mere reference to the powers conferred by the earlier Acts. As observed in *Nathella Sampathu Chetty*, there is a distinction between a mere reference to or a citation of one statute in another and an incorporation which in effect means the bodily lifting of the provisions of one enactment and making them part of another, so much so that the repeal of the former leaves the latter wholly untouched.

(1) [1962] 3 S.C.R. 786.
(2) [1976] 1 S.C.R. 6.

A Section 69(d) of the Act of 1973 must accordingly be read to mean that respondent 1 shall have all the powers of taxation which a Municipal Corporation or a Municipal Council has for the time being, that is to say, at the time when respondent 1 seeks to exercise those powers.

B The Act of 1973 does not provide for any independent power of taxation or any machinery of its own for exercising the power of taxation. It rests content by pointing its finger to the provisions contained in the two Municipal Acts. The three Acts are therefore supplemental, from which it must follow that amendments made to the earlier Acts after the enactment of section 69(d) shall have to C be read into that section. Without recourse to such a construction, the power of taxation conferred by that section will become ineffectual. A reading of the reference to the two earlier Municipal Acts as a reference to those Acts as they stand at the time when the power of taxation is sought to be exercised by respondent 1, will not, possibly, cause repugnancy between the two earlier Acts on one D hand and the Act of 1973 on the other, nor indeed will it cause any confusion in the practical application of the earlier Acts, because the Act of 1973 does not contain any independent provision or machinery for exercising the power of taxation. The first contention of the Attorney General must therefore fail.

E The second contention is that assuming that section 127A of the Municipalities Act or section 135 of the Municipal Corporation Act, which were introduced by an amendment made after the enactment of section 69(d), can be invoked for levying the property tax, respondent 1 cannot impose that tax without following the procedure prescribed by sections 129 and 133 of the aforesaid Acts, respectiF vely. This contention is devoid of substance. Sections 127A and 135 create, by their own force, the liability to be brought to property tax and the right to levy that tax. They provide :

> Notwithstanding anything contained in this chapter, as and from the financial year 1976-77, there shall be charged, G levied and paid for each financial year a tax on the lands or buildings or both.....at the rate specified in the table below :"

Nothing further is required to be done by the Municipality or the H Municipal Corporation in order to impose the property tax and therefore the procedure preliminary to the imposition of other taxes which is prescribed by sections 129 and 133 of the two Acts, can

have no application to the imposition of the property tax. Apart from this the position is put beyond doubt by the language of sections 129 and 133 of two Acts. Section 129 of the Madhya Pradesh Municipalities Act prescribes the procedure for "the imposition of any tax under section 127". Similarly section 133 of the Madhya Pradesh Municipal Corporation Act prescribes the procedure for "the imposition of any tax under section 132". The property tax is imposed by respondent 1 under section 127A of the Municipalities Act and section 135 of the Municipal Corporation Act. It is not imposed under section 127 of the former Act or section 132 of the latter Act. It is therefore not necessary to follow the procedure prescribed by sections 129 and 133 of the respective Acts. This position is made clear, out of abundant caution, by clause (4) of section 133 of the Municipal Corporation Act, which provides that nothing contained in section 133 shall apply to the tax mentioned in clause (a) of sub-section (1) of section 132, which shall be charged and levied in accordance with section 135. Section 132(1)(a) refers to property tax.

A B C D

The learned Attorney General contends that the taxing authority must all the same apply its mind to the question whether it wants to bring to tax the land or the building or both. It is not possible to accept this submission because sections 127A and 135 of the two Acts in question leave no such choice open to the taxing authority. The obligation which the statute places upon it is to impose tax on lands where there are lands only and they can be taxed, on buildings where buildings alone can be brought to tax and on both lands and buildings where lands are built upon and both can be brought to tax. This is not, as said by the Attorney General rationalising the taxing power. What we have said is the plain meaning of the taxing provision.

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The third contention of the Attorney General flows from the provisions of article 285(1) of the Constitution which says that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Section 127A(2) of the Madhya Pradesh Municipalities Act and section 136 of the Madhya Pradesh Municipal Corporation Act also provide that the property tax shall not be leviable, *inter alia*, on "buildings and lands owned by or vesting in the Union Government". Relying on these provisions, it is contended by the Attorney General that since the appellant companies are wholly owned by the Government of India, the lands

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A and buildings owned by the companies cannot be subjected to property tax. The short answer to this contention is that even though the entire share capital of the appellant companies has been subscribed by the Government of India, it cannot be predicated that the companies themselves are owned by the Government of India. The companies, which are incorporated under the Companies Act,
B have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the companies : the Government of India only owns the share capital. In *Rustom Cavasjee Cooper* v. *Union of India*[1] (The Banks Nationalisation case) it was held :

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> "A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability,
D and by a share in the profit."

In *Heavy Engineering Mazdoor Union* v. *The State of Bihar &* Ors., [2] the Heavy Engineering Corporation Limited was incorporated under the Companies Act and its entire share capital was contri-
E buted by the Central Government. It was therefore a Government Company under section 617 of the Companies Act. On the question as to whether the Corporation carried on an industry under the authority of the Central Government within the meaning of section 2(a) of the Industrial Disputes Act, 1947, it was held by this Court that an incorporated company has a separate existence and the law
F recognises it as a juristic person, separate and distinct from its members. The mere fact that the entire share capital of the respondent company was contributed by the Central Government and the fact that all its shares were held by the President and certain officers of the Central Government did not make any difference to that position.

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The decision of this Court in the *Andhra Pradesh State Road Transport Corporation* v. *The Income-tax Officer & Anr.*[3] puts the matter beyond all doubt. In that case, the Andhra Pradesh Road

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(1) [1970] 3 SCR 530. 555.
(2) [1969] 3 SCR 995.
(3) [1964] 7 SCR 17.

Transport Corporation claimed exemption from taxation under article 289 of the Constitution by which, the property and income of a State is exempt from union taxation. This Court, while rejecting the Corporation's claim, held that though it was wholly controlled by the State Government it had a separate entity and its income was not the income of the State Government. Gajendragadkar, C.J., while speaking for the Court, referred to the judgment of Lord Denning in *Tamlin* v. *Hansaford*(1) in which the learned Judge observed :

> "In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government".

In Pennington's Company Law, 4th Edition, pages 50-51, it is stated that there are only two decided cases where the court has disregarded the separate legal entity of a company and that was done because the company was formed or used to facilitate the evasion of legal obligations. The learned author, after referring to English and American decisions, has summed up the position in the words of an American Judge, Sanborn, J. to the effect that as a general rule, a corporation will be looked upon as a legal entity and an exception can be made "when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime", in which case, "the law will regard the corporation as an association of persons". In cases such as those before us, there is no scope for applying the doctrine of lifting the veil in order to have regard to the realities of the situation. The appellant companies were incorporated under the Companies Act for a lawful purpose. Their property is their own and it vests in them. Under section 5(1) of the Coal Mines (Nationalisation) Act, 26 of 1973, which applies in the instant case, the right title and interest of a nationalised coal mine vest, by direction of the Central Government, in the Government company. If the lands and building on which respondent 1 has imposed the

(1) [1950] KB 18.

property tax cannot be regarded as the property of the Central Government for several other purposes like attachment and sale, there is no reason why, for taxing purposes, the property can be treated as belonging to that Government as distinct from the company which has a juristic personality.

The learned Attorney General resisted the taxation on the lands by contending that they belong to the Madhya Pradesh State Government and were taken on lease for a period of 30 years by the appellant companies. It is urged that if at all the lands can be subjected to property tax, it is the State Government and not the appellant companies who can be called upon to pay that tax. This contention does not appear to have been taken before the assessing authority. No documents seem to have been filed before it to bear out facts which are sought to be placed before us nor indeed have we evidence before us to show that the lands belong to the State Government. The appellants may, if so advised, raise this particular point in future assessments. We would, however, like to draw attention to the Explanation to section 147 of the Madhya Pradesh Municipalities Act which says that though the property tax has to be paid by the owner of the land or building, as the case may be, for the purposes of that section a tenant of land or building or both, who holds the same under a lease for an agreed period with a covenant for its renewal thereafter, shall be deemed to be the owner thereof. Section 141(1) of the Madhya Pradesh Municipal Corporation Act provides that the property tax shall be paid primarily by the owner. By sub-section (2) of section 141, the property tax levied on the owner can also be recovered from the occupier of the land or the building. These provisions shall have to be borne in mind by the appellants before any attempt is made before the assessing authority to transfer or avoid the impost of the property tax.

Finally, the learned Attorney General raised a contention of fundamental importance which was not raised in the High Court. The lands and buildings on which respondent 1 has imposed the property tax are used for the purposes of and are covered by coal mines. Basing himself on that consideration the Attorney General argues :

(1) By virtue of the declaration contained in section 2 of Mines and Minerals (Development and Regulation) Act, 1957, the legislative field covered by Entry 23,

List II passed on the Parliament by virtue of Entry 54, List I. A

(2) The Parliament enacted the Coal Mines Nationalisation Act, 1973 for acquisition of coal mines with a view to reorganising and reconstructing such coal mines so as to ensure the rational, coordinated and scientific development and utilisation of coal resources as best to subserve the common good. B

(3) Under section 5 of the Nationalisation Act, the acquired properties were vested in a Government Company in order to carry out more conveniently the object of that Act, and for that purpose, the properties were freed from all encumbrances by section 6 of the Act. C

(4) The taxing power of the State legislature must be construed as limited in its scope so as not to come in conflict with the power and function of the Union to regulate and develop the mines as envisaged by the Nationalisation Act. D

(5) The impugned tax is manifestly an impediment in the discharge of the aforesaid function since it substantially increases the cost of the developmental activities. The tax is not in the nature of a fee. E

Apart from the fact that there is no data before us showing that the property tax constitutes an impediment in the achievement of the goals of the Coal Mines Nationalisation Act, the provisions F of the M.P. Act of 1973, under which Special Areas and Special Area Development Authorities are constituted afford an effective answer to the Attorney General's contention. Entry 23 of List II relates to "Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union". Entry 54 of List I relates G to "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". It is true that on account of the declaration contained in section 2 of the Mines and Minerals (Development and Regulation) H Act, 1957, the legislative field covered by Entry 23 of List II will pass on to Parliament by virtue of Entry 54, List I. But in order to

judge whether, on that account, the State legislature loses its competence to pass the Act of 1973, it is necessary to have regard to the object and purpose of that Act and to the relevant provisions thereof, under which Special Area Development Authorities are given the power to tax lands and buildings within their jurisdiction. We have set out the objects of the Act at the commencement of this judgment. one of which is to provide for the development and administration of Special Areas through Special Area Development Authorities, Section 64 of the Act of 1973, which provides for the constitution of the special areas, lays down by sub-section (4) that : Notwithstanding anything contained in the Madhya Pradesh Municipal Corporation Act, 1956, the Madhya Pradesh Municipalities Act, 1961, or the Madhya Pradesh Panchayats Act, 1962, the Municipal Corporation, Municipal Council, Notified Area Committee or a Panchayat, as the case may be, shall, in relation to the special area and as from the date the Special Area Development Authority undertakes the functions under clause (v) or clause (vi) of section 68 cease to exercise the powers and perform the function and duties which the Special Area Development Authority is competent to exercise and perform under the Act of 1973. Section 68 defines the functions of the Special Area Development Authority, one of which, as prescribed by clause (v), is to provide the municipal services as specified in sections 123 and 124 of the Madhya Pradesh Municipalities Act, 1961. Section 69, which defines the powers of the Authority, shows that those powers are conferred, *inter alia*, for the purpose of municipal administration. Surely, the functions, powers and duties of Municipalities do not become an occupied field by reason of the declaration contained in section 2 of the Mines and Minerals (Development and Regulation) Act, 1957. Though, therefore, on account of that declaration, the legislative field covered by Entry 23, List II may pass on to the Parliament by virtue of Entry 54, List I, the competence of the State Government to enact laws for municipal administration will remain unaffected by that declaration.

Entry 5 of List II relates to "Local Government, that is to say, the constitution and powers of municipal corporations and other local authorities for the purpose of local self-Government". It is in pursuance of this power that the State Legislature enacted the Act of 1973. The power to impose tax on lands and buildings is derived by the State Legislature from Entry 49 of List II : "Taxes on lands and buildings". The power of the municipalities to levy tax on lands and buildings has been conferred by the State Legis-

lature on the Special Area Development Authorities. Those authorities have the power to levy that tax in order effectively to discharge the municipal functions which are passed on to them. Entry 54 of List I does not contemplate the taking over of municipal functions. A

Shri Dharmadhikari, who appears on behalf of the respondents, has drawn our attention to the judgment of a Constitution Bench of this Court in *H.R.S. Murthy* v. *Collector of Chittoor and Another*,(1) which provides a complete answer to the Attorney General's contention. In that case, under the terms of a mining lease, the lessee worked the mines and bound himself to pay a dead rent if he used the leased land for the extraction of iron ore and to pay surface rent in respect of the surface area occupied or used by him. Demands were made upon the lessee for successive years for the payment of land cess under sections 78 and 79 of the Madras District Boards Act, 1920. Those demands were challenged by the lessee on the ground, *inter alia*, that the provision imposing the land cess quoad royalty under the mining leases must be held to have been repealed by the Central Act viz. the Mines and Minerals (Regulation and Development) Act, 1948, and the Mines and Minerals (Regulation and Development) Act, 1957. This contention was repelled by this Court by holding that sections 78 and 79 of the Madras District Boards Act had nothing to do with the development of mines and minerals or their regulation. The proceeds of the land cess were required to be credited to the District fund which had to be used for everything necessary for or conducive to the safety, health, convenience or education of the inhabitants or the amenities of local area concerned. It was further held by the Court that the land cess was not a tax on mineral rights but was in truth and substance a "tax on lands" within the meaning of Entry 49 of the State List. The reasoning adopted in this decision shows that it is not correct to say that the property tax provided for in the Act of 1973 is beyond the legislative competence of the State Legislature; that tax has nothing to do with the development of mines. The power conferred by the State Legislature on Special Area Development Authorities to impose the property tax on lands and buildings is therefore not in conflict with the power conferred by the Coal Mines Nationalisation Act on the Union Government to regulate and develop the Coal mines so as to ensure rational and scientific utilisation of coal resources. The paramount purpose behind the declaration contained in section 2 of the Mines and Minerals (Regulation and Develop- B C D E F G H

(1) [1964] 6 SCR 666.

ment) Act, 1957 is not in any manner defeated by the legitimate exercise of taxing power under section 69(d) of the Act of 1973.

The decision of this Court in *Baijnath Kedia* v. *State of Bihar & Ors.*,(1) on which the learned Attorney General relies, is distinguishable. In that case, the Bihar Government demanded dead rent, royalty and surface rent from the appellant contrary to the terms of his lease on the strength of the amended section 10(2) of the Bihar Land Reforms Act, 1950, and the amended Rule 20 of the Bihar Rules This Court held that the pith and substance of the amended section 10(2) fell within Entry 23 although it incidentally touched land and that, therefore, the amendment was subject to the overriding power of Parliament as declared in section 15 of the Mines and Minerals (Regulation and Development) Act, 1957. By the aforesaid declaration and the enactment of section 15, the whole of the field relating to minor minerals had come within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to section 10 of the Bihar Land Reforms Act. The second sub-rule added to Rule 20 was held to be without jurisdiction for the same reason.

That the declaration in section 2 of the Mines and Minerals (Regulation and Development) Act, 1957 does not result in invalidation of every State legislation relating to mines and minerals is demonstrated effectively by the decision in *State of Haryana & Anr.* v. *Chanan Mal.*(2) The Haryana State Legislature passed the Haryana Minerals (Vesting of Rights) Act, 1973, under which two notifications were issued for acquisition of right to saltpetre, a minor mineral, and for auctioning certain saltpetre bearing areas. It was held by this Court that the Haryana Act was not in any way repugnant to the provisions of the Act of 1957 made by Parliament and that the ownership rights could be validly acquired by the State Government under the State Act.

The decision of a Constitution Bench of this Court in *The Ishwari Khetan Sugar Mills (P) Ltd.* v. *The State of Uttar Pradesh & Ors.*,(3) is even more to the point. In that case, 12 sugar undertakings stood transferred to and were vested in a Government undertaking under the U.P. Sugar Undertakings (Acquisition) Ordinance, 1971, which later became an Act. It was contended on behalf of

(1) [1970] 2 SCR 100.
(2) [1976] 3 SCR 688.
(3) [1980] 3 SCR 331.

the sugar undertakings that since sugar is a declared industry under the Industries (Development and Regulation) Act, 1951, Parliament alone was competent to pass a law on the subject and the State Legislature had no competence to pass the impugned Act by reason of Entry 52, List I read with Entry 24, List II. The majority, speaking through one of us, Desai J., held that the legislative power of the State under Entry 24, List II, was eroded only to the extent to which control was assumed by the Union Government pursuant to the declaration made by the Parliament in respect of a declared industry and that the field occupied by such enactment was the measure of the erosion of the legislative competence of the State legislature. Since the Central Act was primarily concerned with the development and regulation of declared industries and not with the ownership of industrial undertakings, it was held that the State legislature had the competence to enact the impugned law. Justice Pathak and Justice Koshal, who gave a separate judgment concurring with the conclusion of the majority, preferred to rest their decision on the circumstance that the impugned legislation fell within Entry 42, List III—'Acquisition and requisition of property'—and was therefore within the competence of the State Legislature.

These are the main points argued by the learned Attorney General on behalf of the appellant Companies. In the High Court, an additional point was taken, based upon the agreement dated June 24, 1976, which was entered into between the appellant Companies and respondent 1. It was contended in the High Court that respondent 1 had waived its power of taxation by that agreement and, therefore, the imposition of property tax was invalid. The High Court has given weighty reasons for rejecting that argument and we endorse those reasons. We adopt, particularly, the reasoning of the High Court that in the meeting of January 29, 1976, respondent 1 had decided to give up its right to impose the Octroi tax only. The Chairman of respondent 1, therefore, acted beyond the scope of his authority in entering into the agreement with the appellant Companies, under which respondent 1 bound itself not to impose any tax whatsoever.

For these reasons the appeals fail and are dismissed with costs.

N.V.K. *Appeals dismissed.*