**(1979) 11 MP CK 0005**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Petition No 795 of 1978

Administrator, Municipal Council, Durg, M.P. — APPELLANT

Vs

Additional Property Tax Commissioner, M.P. Gwalior and another — RESPONDENT

**Date of Decision :** 30-11-1979

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226, 285, 289
Food Corporations Act, 1964 — Section 12, 27, 3, 3(1), 3(2)
Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 — Section 18, 4, 6

**Citation :** (1980) JLJ 202

**Hon'ble Judges :** G.P. Singh, C.J;B.C. Verma, J

**Bench :** Division Bench

**Advocate :** D.M. Dharmadhikari, for the Appellant; R.P. Sinha, for the Respondent

**Final Decision :** Allowed

## Judgement

G.P. Singh, C.J.—The petitioner in this petition under Article 226 of the Constitution is the Administrator Municipal Council, Durg. The petitioner plays for quashing of the order dated 22nd August 1978 passed by (sic) Additional Property Tax Commissioner, Madhya Pradesh, Gwalior, u/s 18 of the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964.

2. By the impugned order the Additional Property Tax Commissioner held that the godowns of the Food Corporation of India were owned by and vested in the Union Government and were, therefore, exempt from property tax in accordance with section 6 of the Adhiniyam. This conclusion was reached on the reasoning that the Corporation is merely an instrument or agency of the Union Government for carrying out the provisions of the Food Corporation Act, 1964, and that the funds are that of the Union Government and in reality the properties of the Corporation vest in the Union Government.

3. Section 4 of the Adhiniyam authorises the imposition of a tax on lands or

buildings or both situated in an (sic) area at the rates mentioned in the section. Section 6 of the Adhiniyam contains certain exemptions. The section in so fur as relevant provides that the tax shall not be leviable in respect of "buildings and lands owned by or vesting in (i) the Union Government, (ii) the State Government and (iii) Local authority." It was this exemption which was allowed by the additional Property Tax Commissioner by the impugned order in favour of the Corporation.

4 The exemption allowed u/s 6 of the Adhiniyam in respect of buildings and lands owned by or vesting in the Union Government has to be construed in the context of Article 285 of the Constitution which provides that the property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from at taxes imposed by a State or by any authority within the State. The correctness of the reasoning of the Additional Property Tux Commissioner that the Corporation is merely an instrument or agency of the Union Government and that its funds are that of the Union and in reality its properties vest in the Union Government and, therefore, are exempt from property tax, has to be examined in the light of the provisions of the Food Corporation Act, 1964.

5. It may be staled at the outset that the American doctrine of exemption from taxation in regard to State agencies and instrumentalities is not applicable to India: see Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another, The properties of the Corporation, therefor, cannot be given immunity merely on the ground that as stated in the Objects and Reasons of the Food Corporation Act, the Corporation was set up as "a State Agency for she purpose of undertaking trading in food grains in a commercial manner but within the frame work of an over-all Government policy." The Corporation can be allowed exemption from taxation only when on a consideration of the provisions of the Act it is possible to hold that the properties of the Corporation are properties of the Union or, in other words, are owned by or vest in the Union Government. We shall now, therefore, refer to the relevant provisions of the Act. As disclosed by the long title, the Act is an Act to provide for the establishment of Food Corporations for the purpose of trading in food-grains and other food stuffs and for matters connected therewith and incidental thereto. Section 3(1) of the Act provides for the establishment of the Food Corporation of India by a notification issued by the Central Government. Section 3(2) makes the Corporation a body corporate having power to acquire, hold and dispose of property. The capital of the Corporation, as provided in section 5(3), may be provided by the Central Government from time to time alter due appropriation made by Parliament by law for the purpose and subject to such terms and conditions as may be determined by that Government. The management of the affairs of the Corporation vests in a Board of Directors as provided in section 6. The Board of Directors is constituted u/s 7. It (sic) of Directors nominated by the Central Government, the Corporation has borrowing power u/s 27 of the Act. The Corporation has to (sic) a reserve fund as provided in section 33 to which is credited every year such portion of its annual net profits

 

as that Corporation thinks fit. After making provision for such reserve fund and for bad and doubtful debts, depreciation in assets and all other matters which are usually provided for by companies registered and incorporated under the Companies Act, 1956, the balance of the Corporation''s annual net profits are paid to the Central Government. The Corporation is not to be placed in liquidation except by order of the Central Government and in such manner as the Government may direct. This provision is made in section 43 which further provides that no provision of law relating to the winding up of companies or corporations shall apply to a Food Corporation. Section 42 provides that for the purposes of the income tax Act, 1961, or any other enactment for the time being in force relating to income tax, super tax or any other tax on income, profits or gains, a Food Corporation shall be deemed to be a company within the meaning of the income tax Act, 1961, and shall be liable to tax accordingly on its profits and gains. We may also mention that Chapter IV of the Act provides for establishment of State Food Corporations. The capital for such Corporations is advanced by the Central Government and the Food Corporation of India. We are not here concerned with the State Food Corporations. We need not, therefore, refer to the provisions relating to them.

6. The very fact that by section 3 the Food Corporation of India is declared to be a body corporate with power to acquire, hold and dispose of property, it becomes plain that the Corporation is a different legal entity from the Union Government. The properties of the Corporation, therefore, belong to and vest in it. The question, however, is whether the properties of the Corporation can also be said to belong and vest in the Union Government ? The matter is not free from difficulty. In this connection it is to be noticed that the entire capital of the Corporation is contributed by the Central Government, the Corporation is managed by a Board of Directors nominated by the Central Government, the surplus profits are payable to the Central Government and the Corporation can be dissolved by an order of the Central Government. These features of the Corporation show as if it is itself owned by the Union Government, yet till the Corporation is an existence, it cannot he said that it has no separate legal existence and it is a part and parcel of the Union Government or a department of the Union Government. The separate identity of the Corporation is maintained throughout under the Act and it comes in the forefront in section 42 which makes the Corporation liable for payment of income tax as if it were a Company. Now, had the intention of the Act been to constitute the Corporation a department of the Union Government, there was no point in making an express provision subjecting it to income tax, super-tax etc. like a company incorporated under the Companies Act. Section 42 strongly shows that the Corporation is not a department of the Government and that the Act does not intend to lift the corporate veil as is sometimes done in matters of taxation. Further, section 12 of the Act provides for the appointment of officers and other employees of the Corporation which shows that the officers and employees of the Corporation are not employees of the Union Government. That also brings out that the

 

Corporation, (sic) it continues to exist, is a legal entity of its own and is not a department of the Union Government. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, the Supreme Court held that the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance Corporation are authorities within the meaning of Article 12 of the Constitution and fall within the definition of State as contained therein. The Supreme Court, however, made it clear that the employees of these Corporations are not servants of the Union or the State. The Food Corporation of India is a statutory Corporation of the same nature as those considered in Sukhdeo Singh''s case. The Corporation is an authority within the meaning of Article 12 and falls within the definition of State as contained therein, vet its employees are not the servants of the Union Government and similarly its properties are not the properties of the Union. It is true that the Union Government can dissolve the Corporation and after dissolution the Corporation''s properties may vest in the Union Government as the entire capital is contributed by if, yet till the Corporation continues to exist it has separate existence and it cannot be described as a department of the State. Till the Corporation continues to exist, its properties belong to and vest in it. These properties do not belong to and vest in the Union Government until the Corporation is dissolved.

7. In Tamlin v. Hannaford (1950) 1 K B 81 (C A), it was held that the British Transport Commission constituted under the Transport Act, 1947 is not a servant or agent of the crown and has none of the immunities or privileges of the crown. Similarly, in Tremltex Trading Corporation v. Central Bank of Nigeria (1977) 1 All E R 881 (C A), it was held that the respondent Bank is not a department of the Federation of Nigeria and is not entitled to State immunity under the international law. It will be seen that there Corporations though state managed or state controlled are trading Corporations and are not engaged in any governmental activity. In contrast in Mellenger v. New Brunswick Development Corpn. (1971) 2 All E R 593 (C A), the Act incorporating the respondent Corporation expressly slated that it was being constituted "on behalf of the Crown" and the Corporation never pursued any ordinary trade or commerce and so it was held to have the status of a Government Department. In A.P State R.T. Corpn. v. I. T. Officer (Supra) the appellant Corporation which was constituted under the Road Transport Corporation Act, 1950 claimed exemption from tax under Article 289 which was negatived. And, in Bharat Aluminium Company Ltd. Vs. Special Area Development Authority, a Division Bench of this Court held that the properties of the petitioner company in that case, which is a Government company registered under the Companies Act, cannot be said to be owned by the Union Government and do not qualify for exemption from State taxation. These cases support our conclusion that the properties of the food Corporation of India which is a commercial Corporation are not properties belonging to or vesting in the Union Government and are not exempted from taxation u/s 6 of the

 

Adhiniyam or under Article 285 of the Constitution.

8. The petition is allowed. The order of the Additional Property Tax Commissioner is quashed. There will be no order as to costs. The security amount be refunded to the petitioner.

 