

(1978) 04 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 555 of 1977

Bharat Aluminium Company Ltd.

APPELLANT

Vs

Special Area Development Authority

RESPONDENT

Date of Decision : 15-04-1978

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 127A, 127A(2), 135, 136

Citation : (1981) 51 CompCas 184 : (1978) JLJ 494 : (1979) 24 MPLJ 344 : (1979) MPLJ 344

Hon'ble Judges : K.K. Dube, J;G.P. Singh, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; Y.S. Dharmadhikari, and S.L. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.

The petitioner, Bharat Aluminium Company Ltd., is a Government company incorporated under the Companies Act, 1956. The respondent No. 1, Special Area Development Authority for the Korba Special Area, is constituted u/s 65 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (M. P. Act No. 23 of 1973). The petitioner-company is an industrial unit in the Korba Special Area. By notice, dated 15th April, 1977, the respondent, development authority, made a demand of Rs. 13,22,100 as property tax for the year 1976-77 from the petitioner-company. By another notice, dated 16th July, 1977, the development authority demanded Rs. 13,65,673.50 as property tax from the petitioner-company for the year 1977-78. The petitioner, by this petition under Article 226 of the Constitution, challenges the legality of the aforesaid two demand notices.

Before referring to the contentions raised by the learned counsel for the petitioner, it is necessary to have in mind the relevant statutory provisions. The Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973, which shall for

brevity be referred to as the 1973 Adhiniyam, bears a long title which admirably shows its purposes. The long title is I " An Act to make provision for planning and development and use of land; to make better provision for 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 1973 Adhiniyam, which consists of Sections 64 to 71, bears the title " Special Areas". u/s 64, the State Govt. is empowered to declare any area as a special area by issuing a notification. The notification defines the limits of the area declared as a special area. Section 65 provides that for every special area there shall be a special area development authority which consists 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. The development authority for the Korba Special Area, with which we are concerned in this petition, consists of a chairman and 10 members. Every special area development authority, as indicated in Section 66, is a body corporate with perpetual succession and a common seal and has power to acquire, hold and dispose of property, both movable and immovable, and to contract and sue and be sued in its name. The functions of the development authority are laid down in Section 68. We are concerned in this case with Clauses (v) and (vi) of Section 68 which enjoin upon the development authority to provide for the municipal services and municipal management of the special area. Clauses (v) and (vi) of Section 68 read as follows :

" 68. Functions.--The functions of the Special Area Development Authority shall be--...

(v) to provide for the municipal services as specified in Sections 66, 67 and 68 of the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956) or Sections 123 and 124 of the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961), as the case may be--

(a) where the municipal corporation or municipal council existed in such area prior to its designation as special area u/s 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 u/s 64, according to such of the aforesaid Acts as the State Government may direct ;

(vi) to provide for the municipal management of the special area in the same manner as is done by a municipal corporation under the Madhya Pradesh Municipal Corporation Act, 1956 (No. 23 of 1956), or by a municipal council of

the first class constituted u/s 4 of the Madhya Pradesh Municipalities Act, 1961 (No. 36 of 1961), as the case may be,--

(a) where the municipal corporation or municipal council existed in such area prior to its designation as special area u/s 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 u/s 64, according to such of the aforesaid Acts as the State Government may direct."

These clauses in Section 68 in the present shape were first inserted by Ordinance No. 26 of 1975 which came into force on 27th February, 1976 [see Notification No. 84-XXXII-76, dated 7th January, 1976, published in M. P. Rajpatra, dated February 27, 1976 : [1976] M. P. L. T 86]. The Ordinance was later replaced by the Madhya Pradesh Nagar Tatha Gram Nivesh (Sanshodan) Adhiniyam, 1976 (Act No. 6 of 1976). Sub-section (4) of Section 64 of the 1973 Adhiniyam provides that the municipal corporation, municipal council, notified area committee or a panchayat shall cease to exercise the power and perform the functions in relation to the special area which the development authority is competent to perform under the Adhiniyam with effect from the date the development authority undertakes the functions under Clause (v) or Clause (vi) of Section 68. The development authority has also been conferred powers for the purpose of municipal administration and taxation by Clauses (c) and (d) of Section 69. Clauses (c) and (d) of Section 69 read as follows :

" 69. Powers.--The Special Area Development Authority shall--...

(c) For the purpose of municipal administration have the powers which a 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 or municipal council existed in such area prior to its designation as special area u/s 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 u/s 64, according to such of the aforesaid Acts as the State Government may direct ;

(d) for the purpose of taxation have the powers which a 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 or municipal council existed in such area prior to its designation as special area u/s 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 u/s 64, according to such of the aforesaid Acts as the State Government may direct."

Clauses (c) and (d) of Section 69 like Clauses (v) and (vi) of Section 68 were inserted in the present shape by Ordinance No. 26 of 1975, which came into force on 27th February, 1976. The Ordinance, as earlier stated, was replaced by Act No. 6 of 1976.

There was no municipal corporation or municipal council in the Korba Special Area prior to the constitution of the development authority. The Government, therefore, was required 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 purposes of Clauses (v) and (vi) of Section 68 and Clauses (c) and (d) of Section 69. The State Government's power of making this direction is contained in Sub-clause (b) of these clauses. This direction was first issued under all these clauses of Sections 68 and 69 by notification, dated 28th January, 1976, published in the Govt. Gazette, dated 27th February, 1976, and the development authority, Korba, was directed to exercise the powers and perform the functions of a class I Municipality constituted under the Madhya Pradesh Municipalities Act, 1961. This notification became effective from 27th February, 1976, from which date Ordinance No. 26 of 1975 was made effective. By another notification, dated 15th March, 1977, published in the Govt. Gazette, dated 15th July, 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.

We now turn to the relevant provisions of the Municipalities Act and the Municipal Corporation Act. Section 127(1)(i) of the Municipalities Act 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 Municipal Corporation Act 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 buildings or land called the property tax ". The procedure for the imposition of taxes is contained in Section 129 of the Municipalities Act and Section 133 of the Municipal Corporation Act.

In 1964, the State Legislature enacted the Madhya Pradesh Nagaria Sthawar Sampatti Kar Adhiniyam, 1964. This Adhiniyam applied to the whole of Madhya Pradesh. It was also applied to urban areas. By Section 36 of the Adhiniyam, the local authorities were prohibited from recovering the property tax from 24th November, 1970.

In 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 from the abolition of the octroi tax, the Government decided to confer powers on them for levying property tax. For levying entry tax in place of octroi tax, the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhyadesh, 1976 (No. 6 of 1976), was promulgated. For conferring powers on municipal councils and municipal corporations to levy property tax, Ordinance No. 4 of 1976 was promulgated. Both these Ordinances were published in the Madhya Pradesh Gazette, dated 30th April, 1976, and it is from that date that 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.

The provisions inserted in the Municipalities Act and the Municipal Corporation Act, with which we are concerned here, were deemed to have come into force by Section 1(2) of Act No. 50 of 1976 from 1st April, 1976. Section 127A was inserted in the Municipalities Act for the imposition of property tax. Section 127A, in so far as it is relevant, reads as follows :

" 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 :--

Table

(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) where the annual letting value exceeds Rs. 6,000 but does not exceed Rs. 12,000

8 1/3 per centum of the annual letting value.

(iii) where the annual letting value exceeds Rs. 12,000 but does not exceed Rs. 18,000

10 per centum of the annual letting value.

(iv) where the annual letting value exceeds Rs. 18,000 but does not exceed Rs. 24,000

15 per centum of the annual letting value.

(v) where the annual letting value exceeds Rs. 24,000

20 per centum of the annual letting value.

(2) The property tax levied under sub-section (1) shall not be leviable in respect of the following properties, namely:-

(a) buildings and lands owned by or vesting in--

- (i) the Union Government;
- (ii) the State Government;
- (iii) the Council;

Similar to Section 127A of the Municipalities Act, Sections 135 and 136 were inserted in the Municipal Corporation Act. These sections are as follows :

" 135. 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 within the city at the rates specified in the table below :

Table

(i) where the annual value exceeds Rs. 1,800, but does not exceed Rs. 6,000
6 per centum of the total annual value.

(ii) where the annual value exceeds Rs. 6,000, but does not exceed Rs. 12,000
8 1/8 per centum of the total annual value.

(iii) where the annual value exceeds Rs. 12,000, but does not exceed Rs. 18,000
10 per centum of the total annual value.

(iv) where the annual value exceeds Rs. 18,000, but does not exceed Rs. 24,000
15 per centum of the total annual value.

(v) where the annual value exceeds Rs. 24,000
20 per centum of the total annual value."

"136. The property tax levied u/s 135 shall not be leviable in respect of the following properties, namely:

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

- (i) the Union Government;
- (ii) the State Government;
- (iii) the Corporation.

The first contention raised by the learned counsel for the petitioner is that under Clause (d) of Section 69 of the 1973 Adhiniyam, the development authority could only draw upon those powers of taxation which the Municipal Corporation or the Municipal Council had under the Madhya Pradesh Municipal Corporation Act, 1956, or the Madhya Pradesh Municipalities Act, 1961, as these Acts stood on 27th February, 1976, when Clause (d) was inserted in the present shape in Section 69 of the Adhiniyam. It is submitted 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 1973 Adhiniyam and any subsequent change in those powers by an amendment of the Acts could not be available to the development authority. In this connection, it is pointed out that Section 127A and Section 135 directly imposing property tax were inserted in the Municipalities Act and the Municipal Corporation Act respectively from 1st April, 1976, i.e., subsequent to the insertion of Clause (d) in Section 69 of the 1973 Adhiniyam. On this ground, it is contended that the development authority was incompetent to exercise the powers of the Municipality or the Municipal Corporation u/s 127A of the Municipalities Act or Section 135 of the Municipal Corporation Act. It is true that in case of legislation by incorporation, the incorporated provisions of an earlier Act become part and parcel of the incorporating Act and modifications made in the earlier Act subsequent to incorporation have no effect in the application of the incorporating Act. There are, however, exceptions to this rule which have been pointed out by the Supreme Court in *The State of Madhya Pradesh Vs. M.V. Narasimhan*, . After considering various authorities, the Supreme Court laid down the following propositions :

" 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. This principle, however, will not apply in the following cases :

(a) where the subsequent Act and the previous Act are supplemental to each other ; (b) where the two Acts are in *pari materia* ", (c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual ; and (d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

It has also been said that the normal rule does not apply when a statute instead of referring to a particular previous statute refers to the law on the subject generally. In such cases, the reference is construed to mean that the law is as it reads thereafter including amendments subsequent to the time of adoption [see *Sutherland Statutory Construction*, Vol. 2 (3rd Edn.), p. 550, and Supplement (1956), p. 119]. A distinction has further been drawn between a mere reference or citation of one statute into another and incorporation. In the former case, a modification, repeal or re-enactment of the statute that is referred will have also the effect for the statute in which it is referred ; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute [see *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, see further Section 13, M. P, General Clauses Act, 1957, corresponding to Section 8, General Clauses Act, 1897].

We have earlier referred to the provisions of Sections 64, 68 and 69 of the 1973 Adhiniyam. The development authority has to provide for municipal services and municipal management of the special area for which it is constituted in the same manner as is done by a Municipal Corporation under the Municipal Corporation

Act or by a Municipal Council under the Municipalities Act. This duty is imposed under Clauses (v) and (vi) of Section 68 of the Adhiniyam. For the purpose of municipal administration, the development authority has been conferred powers which a Municipal Corporation or a Municipality has under the Municipal Corporation Act or the Municipalities Act. This power is conferred by Clause (c) of Section 69 of the Adhiniyam. Further, the development authority under Clause (d) of Section 69 has for the purposes of taxation " the powers which a municipal corporation or a municipal council has, as the case may be," under the Municipal Corporation Act or the Municipalities Act. We have earlier noted that once the development authority undertakes the functions of municipal services and municipal management under Clauses (v) and (vi) of Section 68 for a special area, the Municipal Corporation, the Municipal Council, Notified Area Committee or the Panchayat, as the case may be, having normally jurisdiction in that area ceases to exercise for the special area the powers and perform the functions and duties which the development authority is competent to exercise and perform [see Section 64(4) of the 1973 Adhiniyam]. Having regard to the object of the Adhiniyam and the provisions contained in Sections 64, 68, and 69, we are of opinion that the Municipalities Act, the Municipal Corporation Act and the 1973 Adhiniyam are supplemental to each other. Therefore, the case falls within exception (a) formulated by the Supreme Court in *The State of Madhya Pradesh Vs. M.V. Narasimhan*, . It can also be said that no specific provision of the Municipal Corporation Act or the Municipalities Act is incorporated in Sections 68 and 69 of the 1973 Adhiniyam and the reference therein is to these Acts in general. This is, therefore, not a case of incorporation, but a case of mere reference coming within the rule in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, . For these reasons, we are of opinion that the general rule that applies to the case of incorporation has no application here and that the reference to the Municipal Corporation Act and the Municipalities Act in Sections 68 and 69 of the 1973 Adhiniyam must be construed to refer to these Acts as amended from time to time. The development authority can, therefore, draw upon the powers contained in Section 127A of the Municipalities Act and Section 135 of the Municipal Corporation Act even though these provisions were subsequently introduced in these Acts.

The next contention of the learned counsel for the petitioner is that the development authority should have followed the procedure contained in Section 129 of the Municipalities Act and Section 133 of the Municipal Corporation Act for imposing the tax. In our opinion, this contention is also without any substance. Section 127A of the Municipalities Act and Section 135 of the Municipal Corporation Act are identical and they, by their own force, impose the tax. The imposition of tax falling within these provisions is directly by the State Legislature and it is not necessary to follow the ordinary procedure for imposing the tax. The words contained in these sections are : " there shall be charged, levied and paid for each financial year a tax on the lands or buildings or both at the rates specified in the table ". the sections do not require anything further to

be done for the purpose of the imposition of tax. The sections directly authorise the Municipality or the Municipal Corporation, as the case may be, to recover the tax without following the normal procedure for the imposition of a tax. That is expressly made clear by Sub-section (4) of Section 133 of the Municipal Corporation Act by way of abundant caution. In our opinion, the procedure for imposition of tax contained in Section 129 of the Municipalities Act and Section 133 of the Municipal Corporation Act has no application here. The taxes are directly imposed by Section 127A of the Municipalities Act and Section 135 of the Municipal Corporation Act. The development authority, which has the same powers as the municipality or the municipal corporation can directly recover the tax without first imposing it in the manner required by Section 129 of the Municipalities Act or Section 133 of the Municipal Corporation Act.

It is then contended by the learned counsel for the petitioner that -the properties belonging to the petitioner-company over which the property tax has been imposed are in reality the properties of the Union of India, and, therefore, these properties come within the exception contained in Section 127A(2)(a)(i) of the Municipalities Act and Section 136(a)(i) of the Municipal Corporation Act and are not taxable. Section 127A(2)(a)(i) of the Municipalities Act grants an exemption in favour of buildings and lands owned by, or vesting in, the Union Govt. Similar exemption is granted by Section 136(a)(i) of the Municipal Corporation Act. We are, however, unable to accept the contention that the properties belonging to the petitioner-company are owned by, or vested in, the Union Govt. As earlier stated the petitioner is a Government company incorporated under the Companies Act. Even if the entire share capital of the petitioner-company may have been subscribed by the Union Govt., it cannot be said that the Union Govt. owns the petitioner-company or its properties. The petitioner has a legal entity of its own. The petitioner owns its properties, the Union Govt. owns only the shares. This legal position is very well established. As stated in the bank nationalisation case, *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, :

" 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....."

In *Heavy Engineering Mazdoor Union v. State of Bihar* [1969] 39 Comp. Cas 905 (SC), the Supreme Court was dealing with the Heavy Engineering Corporation, Ranchi, which like the petitioner before us is a " Government company. The corporation's entire share capital is contributed by the Union Govt. Even so, it was held that the Corporation was distinct from the Union Govt. and that it could not be said that the undertaking carried on by the corporation was carried on by or under the authority of the Union Govt. It was pointed out that an incorporated company has a separate existence and is in law a juristic person separate and distinct from its members. It was also pointed out that " the company in holding its property and carrying on its business is not the agent of its shareholders ". It

was further observed that a commercial corporation, even though it is controlled wholly or partially by a Govt. Dept., is not a servant or agent of the State.

In *Tamlin v. Hannaford* [1950] 1 KB 18 (CA) it was held that the British Transport Commission which is a statutory corporation 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. It was pointed out in that case that when Parliament intends that a new corporation should act on behalf of the Crown, it as a rule so states in the statute constituting the corporation and, in the absence of any such provision, the proper inference in the case, at any rate, of a commercial corporation, is that it acts on its own behalf, even though it is controlled by a Govt. Dept. The case of *Mellenger v. New Brunswick Development Corporation* [1971] 1 WLR 604 furnishes the illustration of a corporation which was held to be an arm or alter ego of the Government. The Act incorporating the Corporation expressly stated that it was being constituted " on behalf of the Crown " and, therefore, it was held to have the same status as a Govt. Dept. In contrast, in *Trendtex Trading Corporation v. Central Bank of Nigeria* [1977] 1 All ER 881 it was held that the Central Bank of Nigeria was not a Govt. Dept. and was not entitled to State immunity. Having regard to the authorities, the petitioner, which is not even a statutory corporation, cannot be equated to a Govt. Dept. like the Railways and the Post Office and its properties cannot be held to be the properties of the Union Govt. Indeed, the matter is put beyond doubt by the decision of the Supreme Court in *Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another*, . The Andhra Pradesh Road Transport Corporation claimed exemption from tax under Article 289 of the Constitution which provides that the property and income of a State shall be exempt from Union taxation. In negating the exemption claimed by the corporation, the Supreme Court held that the corporation, although a State controlled corporation, had a separate entity and the income of the corporation was not the income of the State and that it was not immune from taxation under Article 289.

The learned counsel for the petitioner submitted that although normally a corporation is to be taken as having a separate legal entity distinct from its shareholders, yet in matters of taxation, the corporate veil can be lifted and the reality can be seen. In this connection, reference was made to *Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others*, . The Supreme Court in that case after examining as to when the doctrine of lifting the corporate veil can be applied pointed out (at p. 470) :

".....the judicial approach in cracking open the corporate shell is somewhat cautious and circumspect. It is only where the legislative provision justifies the adoption of such a course that the veil has been lifted.....Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation."

The Supreme Court has not laid down any general principle that in matters of taxation, a corporation must in every case be equated to its shareholders. If the Legislature enacts a provision enabling the court to lift the corporate veil for the purpose of avoiding evasion of tax or to prevent fraud, the court can go behind the corporate veil. But in the absence of a legislative provision contained in the Act imposing the tax or in the Act constituting the corporation, it is not open to the court to equate the corporation to its shareholders. There is nothing in the 1973 Adhi-niyam or the Municipalities Act or the Municipal Corporation Act enabling us to hold that the properties owned by the petitioner-company must be deemed to be owned by the Union Govt. which contributed the entire share capital of the company. It is, therefore, not possible for us to accept the argument that this is a case where the corporate veil can be lifted and the company can be equated to the Union Govt. The argument of lifting the veil must, therefore, fail. The properties of the petitioner belong to the petitioner. They are not properties owned by, or vested in, the Union Govt. The exemption contained in Section 127A(2)(a) of the Municipalities Act and Section 136(a)(i) of the Municipal Corporation Act does not apply to the petitioner-company.

The last contention of the learned counsel for the petitioner is based upon an agreement, dated 24th June, 1976, entered into between the petitioner and the development authority. By this agreement, the development authority agreed not to exercise its power of taxation or to levy any charge under the 1973 Adhiniyam or any other Act or notification that may come into force from time to time and, in consideration thereof, the petitioner agreed to contribute an annual sum of Rs. 3,00,000 to the development authority. The agreement was made for a period of 10 years beginning from the calendar year 1976. The argument of the learned counsel for the petitioner is that the development authority waived its power of taxation by this agreement and, therefore, the imposition of property tax and the notices issued were invalid. In our opinion, this contention is also devoid of substance. It is well settled that a public authority cannot fetter the future exercise of its statutory power by a private contract unless the contract itself is entered into in exercise of its statutory power [see *Indian Aluminium Company Vs. Kerala State Electricity Board*, , and *Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another*,]. The learned counsel for the petitioner has failed to point out any statutory power in the exercise of which the agreement relied upon may have been entered into by the development authority. In the absence of any statutory provision which could have enabled the development authority to fetter the future exercise of its statutory power of taxation, the agreement cannot create a bar for imposing the tax by the development authority in the exercise of its statutory power of taxation.

There is yet another reason why the defence based on this agreement must fail. The agreement was executed by the chairman on behalf of the development authority. A meeting of the development authority was held on 29th January, 1976. The minutes of that meeting have been exhibited as annex. IX. It was decided in that meeting that the decision on the imposition of octroi duty in the

special area should be deferred for the time being as the major public sector undertakings were expected to contribute the agreed amount to the development authority. The rate of yearly contribution was also decided upon in that meeting. It will thus be seen that the development authority did not decide to give up or defer the imposition of any other tax except the octroi tax. The decision contemplated non-imposition of octroi tax in lieu of annual contributions to be made by the industrial undertakings functioning within the special area. The chairman of the development authority was, therefore, not entitled to sign any agreement promising on behalf of the development authority not to impose any tax whatsoever. The chairman may have been competent to enter into an agreement with respect to octroi tax, but as no decision had been taken with respect to other taxes, the agreement executed by him on behalf of the development authority was wholly unauthorised. For this reason also, the petitioner cannot rely upon the agreement.

The petition fails and is dismissed. There shall be no order as to costs of this petition. The security amount deposited by the petitioner shall be refunded to it.