

(2009) 01 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No's. 975, 1106, 1110, 1161 and 3430 of 2007 and 19 of 2008

Western Coalfields Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-01-2009

Acts Referred:

All India Council for Technical Education Act, 1987 — Section 10
Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 10, 10(1), 10(2), 11, 11(1)
Coal Mines (Nationalisation) Act, 1973 — Section 10(1), 11, 11(1), 11(2), 2
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 14, 246, 246(3), 248(2), 254
Hindu Succession Act, 1956 — Section 14(1)
International Airports Authority Act, 1971 — Section 12, 12(1), 12(3), 21, 22
Maharashtra Land Revenue (Reconstruction of Land) Rules, 1968 — Rule 4, 5, 6
Maharashtra Land Revenue Code, 1966 — Section 117, 168, 18, 2(16), 2(19)
Mineral Concession Rules, 1960 — Rule 20, 22, 22(3), 22(4), 22(4A)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 18, 2, 5(1), 7(2)
Transfer of Property Act, 1882 — Section 54

Citation : (2009) 4 BomCR 414 : (2009) 111 BOMLR 502

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : Sharan, Additional Solicitor General and S.C. Mehadia, for WCL, for the Appellant; Bharati Dangre, Additional Government Pleader, T.R. Kankale, Asst. Govt. Pleaders, D.B. Patel and R.N. Kothari, for the Respondent

Judgement

B.P. Dharmadhikari, J.—Common question involved in all these Writ Petitions is, whether State Government can levy and demand any sum as amount of nonagricultural assessment from Petitioners WCL.... Petitioner- Company is incorporated under the Companies Act, 1956 with its Head Office at Nagpur and it is Central Government Undertaking in public sector as also the Government Company within the meaning of Section 617 of Companies Act. It is having coal mines in western part of the nation including State of Maharashtra and Madhya

Pradesh. Prayers in all Writ Petitions filed by it are to declare that orders assessing non-agricultural tax and demand notices issued consequentially are illegal. There is also similar prayer in relation to Zilla Parishad cess and Gram Panchayats cess with direction to Respondents to refund the amount already recovered from it on that account.

2. In W. P. 1161/2007 challenge is to assessment orders dated 3/3/2005 and 4/3/2005 and consequential demand notices dated 5/3/2005 of Tahasildar, Chandrapur. W. P. 975/2007 raises challenge to assessment orders dated 4/3/2005, 5/3/2005, notice dated 7/3/2005 and consequential demand notice dated 5/3/2005 again by Tahasildar, Chandrapur. W. P. 1106/2007 challenges assessment orders dated 7/3/2005, demand notices dated 7/3/2005, 16/10/2006 by Tahasildar, Ballarpur (District Chandrapur). W. P. 1110/2007 challenges assessment orders dated 3/3/2005, demand notices dated 7/3/2005, 19/11/2004 & 13/10/2006 by Tahasildar, Rajura (District Chandrapur). W. P. 3430/2007 challenges demand notices dated 16/1/2001, 18/1/2001, 24/1/2001, 23/1/2001 & 13/2/2001 by Tahasildar, Wani (District Yavatmal). It also challenges common order dated 29/10/2002 passed in Rev. Appeals 9,11 to 21/RRC-70/2001 (of Kolera) by S.D.O. Wani, order dated 29/8/2005 by Addl. Collector in further Rev. Appeal 70/2/2004-05 and order dated 12/2/2007 in Revision No. 2/RRC-70/2005-06 by the Additional Commissioner, Amravati Division. In W. P. 19/2008 challenge is to demand notices dated 16/1/2001, 18/1/2001, 30/1/2001, 1/2/2001, 5/2/2001 & 1/3/2001 by Tahsildar, Wani (District Yavatmal). It also challenges common order dated 25/10/2002 passed in Rev. Appeals 1 to 8 & 10 /RRC-70/2001 by S.D.O. Wani, dated 29/8/2005 by Addl. Collector in further Rev. Appeal 70/2/2004-05 (of Ukani) and order dated 12/2/2007 in Revision No. 2/RRC-70/2005-06 (of Kolera) by the Additional Commissioner, Amravati Division. In W. P. 2604/2008 challenge is to demand notices dated 21/12/2001, 15/2/2006, 17/2/2006, 16/3/2006 by Tahasildar, Parseoni (District Nagpur). It also challenges order dated 3/12/2002 passed in Appeal by S.D.O. Ramtek, dated 30/11/2007 by Addl. Collector, Nagpur in further Rev. Appeal 114/MRC--81/2006-07(of Pipti, Kandri, Tekadi & Gondegaon) and order dated 2/4/2008 in Appeal No. 1/MRC-81/2007-08 by the Additional Commissioner, Nagpur Division. As the bone of contention between parties is competence of State Government to recover non-agricultural tax from Petitioners, they have not addressed this Court about the correctness or otherwise of the Appellate or Revisional orders mention above.

3. By reasoned order dated 26/2/2008, this Court admitted all Writ Petitions of the year 2007 and granted interim relief. Writ Petition 19/2008 came to be admitted and interim relief has been granted in it on 3/3/2008 in view of this earlier order. W. P. 2604/2008 is not admitted so far and this Court has not issued even a formal notice therein. However as all the matters are being considered together, Respondents have already filed their submissions in the matter. Accordingly Rule also in Writ Petition No. 2604/2008. It is also heard finally along with other Writ Petitions mentioned above.

4. I have heard Additional Solicitor General Shri Sharan with Adv. S.C. Mehadia, for Petitioner- WCL and Additional Government Pleader (Mrs) Bharati Dangre with Asst. Govt. Pleaders T.R. Kankale, D.B. Patel & R.N. Kothari for State of Maharashtra in all the matters. Shri Sharan has placed short written notes on record while opening the arguments and also while rebutting the oral contentions of the Respondents.

5. (A) Learned ASG Sharan contends that WCL has come into existence because of nationalization of coal mining activity in the country due to Coal Mines (Nationalization) Act, 1973. W.C.L. receives lands for its activities by three modes i.e. by acquisition under Coal Bearing Areas (Acquisition and Development) Act, 1957 -- hereinafter referred to as Coal Bearing Act, by acquisition under Coal Mines (Nationalisation) Act, 1973 -- hereinafter referred to as .Nationalisation Act.; by acquisition under Land Acquisition Act and by Purchase. The impugned demand is in relation to lands which thus came to Petitioners. As the Central Government is the owner of these lands, because of Article 285 of the Constitution of India, these lands cannot be taxed at all. By virtue of Section 10 of Coal Bearing Act the lands vested absolutely in Central Government and under its Section 11, the lands have been transferred to WCL but then as absolute right to deal with or alienate these lands is not conferred upon W.C L., it is not the owner and Central Government continues to be the absolute owner. Right to alienate is "sine qua non" for ownership or vesting and for this proposition support is being drawn from Hindustan Aeronautics Limited Vs. The State of Maharashtra and Others, and 1986 (O) BC I 143 : 1985 Mah.L.J. 343 International Airport Authority of India v. State Of Maharashtra as also of Hon Apex Court reported at Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, .

(B) By placing reliance upon Section 5 of Nationalization Act it is stated that mines acquired there-under also do not vest absolutely and WCL is not complete owner thereof. Attention is invited to Section 2(h) thereof to point out the wide field covered by meaning given to phrase "mine". It is contended that u/s 4 Central Government becomes Lessee after vesting and by Section 3 & 6, said vesting is free from all encumbrances. Deemed lease u/s 5(2) and its effect is being relied upon by pointing out how deeming provision needs to be interpreted to urge that rights of Central Government become the rights of WCL and liabilities of Central Government only become its liabilities. It is also urged that under the statutory lease on account of Rule 72 and Form .K. of Mineral Concession Rules, 1960 framed u/s 13 of Mines and Minerals (Regulation and Development) Act, 1957; Petitioners are not obliged to pay any land revenue to State Government. Mineral Concession Rules, 1960 are referred to as 1960 Rules while Mines and Minerals (Regulation and Development) Act, 1957 is referred to as Act No. 67 of 1957 hereafter.

(C) It is submitted that lands subjected to non-agricultural tax under the Maharashtra Land Revenue Code, 1966 are the lands wherein mining activities or

activities essential for such mining are undertaken/performed and all lands are covered by mining lease. Regulation and development of mine is subject enumerated under Entry 54 List I to 7th Schedule. Parliament has in exercise of its power under this entry enacted Mines and Minerals (Regulation and Development) Act, 1957 & Mineral Concession Rules, 1960. As these 1960 Rules do not stipulate payment of any land revenue to the State Government by Lessee, imposition of non-agricultural tax is claimed to be directly in conflict with Central Legislation and therefore void ab initio. Judgment of Hon Apex Court reported at 1991 (suppl. 1) SCC 81 Orient Paper & Industries Ltd. v. State of Orissa is relied upon in support. Similarly, by pointing out State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, , it is argued that even if Rule 72 or Form "K" above may be a subordinate legislation, still, State enactment (referable to Entry 25 in List II) in conflict there with is null and void.

6. (A) Learned Addl. G.P. Smt. Bharati Dangre with respective other AGPs raise preliminary objection by pointing out that these Writ Petitions lack necessary details and, therefore, deserve to be dismissed. Attention is invited to judgment dated 21/12/2006 delivered in W. P. 1407/2006 to point out how absence of material has been found to be fatal deficiency by this Court. It is argued that the Petitioners get necessary land for their activity through purchase, acquisition or allotment by State Government, encroachment on Government Lands, through Coal Bearing Act and through Nationalization Act. It is contended that lands received by Petitioners by last three modes are relevant for present litigation. Lands forming subject matter of W. P. 1161/2007 at Mouza Ghugus are said to be unauthorizedly converted for non-agricultural purpose since 1973 -- 74 and by inviting attention to order of Tahasildar, Chandrapur dated 3/3/2005, it is pointed out that the nonagricultural tax there is for such unauthorized user for residential and for industrial/official use. Judgment dated 5/6/2007 in W. P. 5523/2004 is shown to urge that this Court on earlier occasion, had reminded the matter back after noticing that the orders of non-agricultural assessment did not show any application of mind to the nature and status of the land. It is urged that impugned orders are passed with due application of mind. Reported judgments in Hindustan Aeronautics Ltd v. State Of Maharashtra & International Airport Authority of India v. State Of Maharashtra (supra) are commented upon to show that the views therein are not relevant in present matters.

(B) Purpose of Coal Bearing Act is pointed out and it is stated that when lands vest in Central Government, then only vesting is "free from all encumbrances". u/s 11(1) and (2), the Central Government directs vesting with Government Company like present Petitioner and when lands go to such Government Company, the immunity available to Central Government by virtue of Article 285 of Constitution of India does not pass over to Petitioners. By inviting attention to provisions of Section 4 and 5 of Nationalization Act, again, same arguments are advanced. To demonstrate constitutional competence of State Government to legislate in the matter of non13/ agricultural tax , Entry 23,49 and 50 of List II

are being pointed out as against Entry No 54 in List I. Section 2(16), (19) and (21) of MLR Code read with Section 117 thereof are pressed into service for this purpose. Attention is also invited to Section 64, 168 as charging sections.

(C) Judgments reported at *Western Coalfields Limited Vs. Municipal Council, Birsinghpur Pali and Another*, ; *Electronics Corporation of India Ltd. and Others Vs. Secretary, Revenue Department, Govt. of Andhra Pradesh and Others*, ; *The Board of Trustees for the Visakhapatnam Port Trust Vs. The State of Andhra Pradesh and Others*, and in same volume at page 74-- *Food Corporation of India v. Municipal Committee, Jalalabad* are pointed out to show that Hon. Apex Court has noted difference between Union of India or Central Government and the Government company. *Electronics Corporation of India Ltd v. Secretary, Revenue Department, Government of A. P.* reported at 1994 (4) SCC 458 ; *Food Corporation of India Vs. The Sub-Collector, Narsapur and others*, ; *International Airport Authority of India Vs. Municipal Corporation of Delhi and Others*, are also pressed into service for same purpose. *Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others*, and Judgment of Hon Division Bench of Jammu and Kashmir High Court reported at *Hotel Corporation of India Vs. State of Jammu and Kashmir and Others*, , are also cited to demonstrate how position has not been correctly appreciated by this Court in its earlier judgment mentioned above. It is urged that there is nothing on record to show that Central Government has not ceased to be the Owner. Pleadings in Writ Petitions are also pointed out to show that Union of India is not the owner and lands no longer vest in it. *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, , is relied upon to show legislative competence of State Legislature in the matter. It is argued that Clauses 4 and 5 of the order by which lands vest in WCL do not in any way derogate from ownership of property or vesting thereof with WCL. Attention of this Court is also invited to the fact that other grounds of challenge like time-barred tax claim, retrospectively of the assessment or computation errors or claim for exemption have not been argued by Petitioners.

7. (A) In his reply arguments, Learned ASG Sharan has stated that his arguments about effect of deeming fiction are not even rebutted and Clause 4 and 5 of allotment letter show the eminent domain of Central Government. In order to explain the provisions in Article 285 and his arguments further, he cited 1950 (supl) SCR 92 *The Corporation of Calcutta v. The Governors of St Thomas School Calcut*; *Kalawatibai Vs. Soiryabai and others*, and *Managing Director, National Coal Development Corporation Ltd. and etc. Vs. State of Bihar and Others*, . It is further urged that necessary details in relation to lands are already given in all petitions and attention has been invited to pages 32 -- 33 of W. P. 1106/2007. As "Rule" is already issued in the matter after hearing both sides, point of maintainability cannot be debated as it was already pressed into service at the stage of admission. It is stated that rule of *res-judicata* also applies at different stages of same litigation and, therefore, the question cannot be reargued at this stage. *Bhanu Kumar Jain Vs. Archana Kumar and Another*, ,

and several other judgments are cited in support. It is further urged that argument of not obtaining previous permission before changing the user of land is misconceived because the lands given to WCL are only for mining purposes and no other purpose. Acquisition of land for the purpose of coal mining itself amounts to sanctioning the use of land for non-agricultural purpose. It is urged that sanction for such user or change of user is implicit in the allotment or acquisition. Various judgments cited by Learned Addl. G.P. & other AGPs. are also attempted to be distinguished. Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , and some other judgments are cited to urge that a precedent is an authority for what it decides and not for what could logically follow from it. Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others, is relied upon to show that the Courts interpret law and not the judgments. According to learned Counsel issue regarding effect of deeming fiction u/s 5(2) of Nationalization Act has not been determined by any of the judgments and hence, the judgments are not authority governing present controversy. Again Form .K . Chapter 7 Clause 1 of 1960 Rules is pointed out and it is canvassed that State has not argued that Leases granted to WCL were not as per said Form or then the terms thereof are not binding on it. It is pointed out that the Hon Judge of Apex Court party to its judgment upholding imposition of municipal taxes on Airport Authority in Dum Dum Airport case (supra) while deciding International Airport Authority of India v. State Of Maharashtra (supra) as a Hon Judge of this High Court had taken different view after noticing the concept of vesting and its different shades. It is further clarified that WCL did not acquire a single lease under Coal Bearing Areas (Regulation & Development) Act, 1957 and hence only the provisions of Section 10(1) and 11(1) govern the issue. There is no question of looking into Sub-section (2) of either Section 10 or 11. It is urged that separate machinery is provided for eviction and as no action for eviction of WCL has been taken, it implies that there is no encroachment. It is explained that other grounds of challenge like time barred tax claim, retrospectively of the assessment or computation errors or claim for exemption have not been invoked as the same need to be decided by Appellate/Revisional authorities if this Court does not find merit in the Article 285 challenge.

(B) Learned Addl. G.P. Smt. Dangre with other AGPs. has pointed out that Managing Director, National Coal Development Corporation v. State of Bihar (supra) is the judgment in case of a virgin land & attention is invited to pleadings in W. P. 1161/2007.

8. (A) It is placed on record that Petitioners have offered no arguments about prayer in relation to Zilla Parishad cess and Gram Panchayats cess. Similarly, about challenge to quantum of NA tax or its retrospective recovery no contentions are advanced mentioning that the same can be looked into by the competent authority after the questions raised herein are sorted out.

(B) Judgment dated 5/6/2007 in W. P. 5523/2004 shows that this Court found that merely because WCL did not bother to place all material on record before

the Revenue Authorities or tender proper evidence, the Authorities cannot avoid their statutory responsibility under Maharashtra Land Revenue Code to apply law correctly after ascertaining the actual facts. The matter was remitted back with observation that issuance of the proper show cause notice or a supplementary notice to the WCL was essential in the matter. This is sufficient to demonstrate the inappropriateness in preliminary objection sought to be raised by the State Government here. In case of *Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others*, , Hon. Apex Court found that the finding of High Court about all lands in possession of ITDC being within limits of Dum Dum Municipality was not based on any definite material and hence it was left open for decision by appropriate authority at appropriate stage. Here also the effect of want of relevant details can be considered at proper stage in this judgment.

9. The consideration of the controversy has to be after close scrutiny of the two judgments of this Court on which Petitioner WCL have placed heavy reliance.

(A) *Hindustan Aeronautics Ltd. v. State of Maharashtra and Ors.* (supra) is the judgment of learned Single Judge of this Court which considers the fresh decision of State Government after its earlier order was set aside by this Court and matter was remanded back to it. This earlier judgment is reported at *Hindustan Aeronautics Ltd. Vs. State of Maharashtra and Others*, . Brief mention of this earlier decision here is necessary. There the demand of amount towards non-agricultural assessment was disputed by the petitioner on the ground that the title of the land vested with Union of India. Secretary for State while returning finding that the land does not belong to the Central Government adverted to the entries in the record of rights never decisive regarding title of the land. The question whether the subject land was the property of the Union or not was held to be purely a question of fact . Though the petitioner was in possession but if the property was still the property of the Union then the question of recovery of non-agricultural land revenue was found not to arise in view of Article 285(1) of the Constitution of India. Defence of Petitioner was that there was no valid conveyance of title of the subject land by Union of India to the petitioner and the Union of India continues to be the absolute owner of the property in question in spite of a deed dated 24-6-1978 signed between the respondent No. 5 and the petitioner. The said deed was not registered and hence that title did not pass to the petitioner for want of registration. State Government urged that registration was not necessary. However, this Court found that it was not the basis on which the Secretary had decided the matter nor that plea was taken in affidavit filed before this Court on behalf of State Government. On the other hand, the petitioner had contended that document had not been acted upon. In these circumstances, after quashing the impugned order the matter was remitted to the Principal Secretary of Revenue Department for consideration afresh in accordance with law without being influenced by any of the observations in the impugned order or in High Court order. Judgment relied upon by the WCL before me in this matter is in challenge to this subsequent decision of said Secretary.

(B) Paragraph 14 and 15 of *Hindustan Aeronautics Ltd. v. State of Maharashtra and Ors.* (supra) relied upon before this Court are important. It was noticed that State Government found title in Petitioner Hindustan Aeronautics because of indenture dated 22/6/1978. The said document was unregistered and State treated that document as in the nature of "sale". It was found that second part of Section 54 of Transfer of Property Act contemplated two ways of transfer of tangible immovable property costing less than Rs. 100/-. As the registered document was absent, first such way was absent and as State did not find that transfer was by delivery of possession, the other way was not shown to have been followed. The judgment then proceeds to consider the precedents cited to note that those judgments contemplated ownership of the property and it was also noticed that definition of "owner" as contained in Andhra Pradesh Non-agricultural Assessment Act, 1963 was expanded even to include the Lessee in respect of the land owned by State Government. It was found that there was no parallel provision in Maharashtra Land Revenue Code. In paragraph 17 the contentions of State Government about the wide meaning of expression "transfer" or "divesting" are noted with question whether in facts there had been a transfer by such action by which it could be gathered that land ceased to be property of the Central Government. Then in paragraph 19, this Court held that petitioner before it was neither an owner nor a grantee. It is obvious that the question which is being raised before me by Petitioner-W. C. L. did not arise for consideration in this reported judgment. As the document purporting to effect transfer was found not to possess that effect and as facts on record did not establish divesting of any interest by Union of India, this Court found that Article 285 continued to apply and hence non-agricultural tax was not leviable.

10. (A) *International Airport Authority of India v. State of Maharashtra* (supra) is the other judgment of this High Court (by Hon. S.P. Bharucha, J.) & Petitioner is trying to read it with judgment of Hon Apex Court in case of *Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others*, , to which Hon Judge is not a party. Effort is to stress that angle considered in judgment of this High Court was not required to be looked into by Hon Apex Court. *Western Coalfields Ltd. v. Municipal Council, Birsinghpur Pali* (supra) is the later judgment of Hon Apex Court on same issue and to it Hon. Judge is a party. In paragraph 8 of this later judgment, it is observed:

8. We should now add that the issue that we are here concerned with is substantially covered by the judgment of this Court in *Municipal Commissioner of Dum Dum Municipality and Others Vs. Indian Tourism Development Corporation and Others*, and, agreeing with that judgment, we see no reason to accept Mr. Raval's submission that it needs to be reconsidered.

In fact, Hon. Judge has delivered the Constitutional Bench judgment of Hon Apex Court in case of *Electronics Corpn. of India, Ltd., v. Secy., Revenue Deptt., Govt. of A.P* (supra).

(B) Judgment delivered by Hon Judge as Judge of this High Court [International Airport Authority of India v. State of Maharashtra (supra)] shows that there the question whether land belonging to Union Government earlier devolved upon International Airport Authority by virtue of Section 12(1) (a) of International Airports Authority Act, 1971 (.1971 Act. hereafter) arose for consideration. If the land was held as belonging to Central Government, Article 285 of Constitution applied to it and not otherwise. Paragraph 2 this judgment is important and it shows that in terms of Section 12(3) of said 1971 Act dispute of such nature was to be resolved by Central Government in consultation with Airport Authority & accordingly it was decided by Central Government holding that the land on which non-agricultural tax was demanded by State of Maharashtra continued to belong to Central Government and its ownership was not transferred to said Authority. In paragraph 11 of this judgment different shades of the meaning of word "vest" are noticed and in paragraph 12 thereafter scheme of 1971 Act has been considered. It is noticed that Airport Authority has to pay balance of its annual net profits to Central Government and it has also to prepare the programme of its next financial year with financial estimate thereof and obtain approval from Central Government. The Central Government has retained the power to take away the management of Airports from the Authority and entrust it to any other person. In paragraphs 13 and 14 judgment of Hon Calcutta High Court and Hon Gujarat High Court holding that the transfer was for limited purpose of administration and management are appreciated. Thereafter in paragraph 15, it has been concluded that since the word "vest" is capable of variable meanings, provisions of Section 12(1)(a) thereof were of no assistance and other provisions of the 1971 Act needed to be looked into. In paragraph 16 it is noticed that no contract for sale of immovable property can be made by Airport Authority unless previously approved by Central Government and it had no power to lease if it was for period of more than 30 years without such previous approval. It has been therefore observed that vesting with Airport Authority was only for the management of Airports and Union Government remained the owner. Immunity conferred by Article 285 was, therefore, held to be available and State Government could not impose any tax upon said land. It is obvious that view taken is due to appreciation of scheme of 1971 Act as also of decision of Union of India in terms of its Section 12(3). I find that the judgment of Hon Apex Court in case of Municipal Commissioner of Dum Dum Municipality v. Indian Tourism Development Corporation (supra) being considered little later does not support this appreciation of statutory scheme.

11. Judgment of Hon. Apex Court delivered by Hon. Judge in case of Electronics Corpn. of India, Ltd., v. Secy., Revenue Deptt., Govt. of A.P (supra) now needs to be perused. Levy of non-agricultural assessment by A.P. Non-Agricultural Land Assessment Act (14 of 1963) (as amended by Act 28 of 1974) on land owned by Central Govt. but leased out to appellant company for industrial and commercial purpose was held legal & it was held that it can be recovered from Company. Plea of estoppel on ground that State Government in its reply letter stated that

no separate notification is necessary for exempting land given to Union of India from payment of said levy was held not tenable. There with effect from 1st July, 1974, Section 12 of the Act was amended so that it applied to land which was owned by the Central or a State Government and was leased out for any commercial, industrial or other non-agricultural purpose. Section 2(j) defining an "owner" was also amended from that date to include a lessee of land owned by the Central or a State Government if the land was leased out by such Government for a commercial, industrial or other non-agricultural purpose. By virtue of Section 3, the obligation to pay non-agricultural assessment on the leased land lay upon the owner lessee. In the case before it, Hon Apex Court found the appellant company to be the lessee of the Department of Atomic Energy of the Union of India in respect of the said land. The said land, therefore though of the ownership of the Central Government, being leased out to the appellant company for an industrial and commercial purpose, was land to which the said A.P. Act applied. By virtue of the amended definition of "owner" u/s 2(j) of that Act, the appellant company was held to be owner of the said land and, by virtue of Section 3, was found liable to pay non-agricultural assessment thereon. Apex Court declared that a clear distinction must be drawn between a company and its share-holder, even though that shareholder may be only one and may be the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. Its earlier judgment in case of *Western Coalfields Ltd v. Special Area Development Authority* (supra) has been relied upon in support. The question about vesting decided by Hon. Judge as Judge of this High Court did not require consideration by Hon Apex Court in this Constitutional Bench judgment.

12. Judgment of Hon Apex Court in case of *Municipal Commissioner of Dum Dum Municipality v. Indian Tourism Development Corporation* (supra) considers properties vesting in Airport Authority by virtue of Section 12 of International Airport's Authority Act, 1971 i.e. 1971 Act. Provisions of Section 12 along with its Sub-section (3) are reproduced in paragraphs 11/12 of this report and then in later paragraphs 13 to 16 the scheme of the 1971 Act is briefly stated. The argument advanced in paragraph 18 about different shades of expression "vest" is considered in paragraph 22 which also shows consideration of argument that the vesting of properties in Airport Authority was only for the purpose of managing those properties and ownership thereof never vested in the Authority. It has been concluded that the scheme of the 1971 Act and absence of words of restriction in Section 12 revealed the intention of legislature that properties ceased to be the properties of Union of India and vesting in Airport Authority was neither restricted nor temporary. In para 23, Section 33 of 1971 Act is held to be a temporary and regulatory measure which usually finds place in enactments dealing with Cooperative societies and Panchayat Raj institutions. In paragraph 24, Section 34 dealing with supersession of Airport Authority are also considered to find that for limited period only properties vested in Union. In paragraph 26,

requirement of giving notice before taking action u/s 33 and 34 is held to indicate that Airport Authority was meant to be a separate entity with distinct identity. In paragraph 28 and 29 of the reported judgment letters written by Government of India purported to the u/s 12 (3) of 1971 Act are reproduced and in paragraph 30, Hon Apex Court has given reasons for holding it not to be a binding decision in terms of Section 12 (3). In paragraph 34 of this judgment, its earlier judgment in case of Western Coalfields Ltd v. Special Area Development Authority (supra) has been cited with approval by the Hon. Apex Court. Thus, this judgment clearly overrules the view of this High Court in International Airport Authority of India v. State of Maharashtra (supra). It is to be noted that Hon. Apex Court has set aside the view of Calcutta High Court and found that similar view reached by Learned Single Judge of this High Court was subject-matter of L.P.A. before its Division Bench. The Apex Court has also dismissed appeal of Airport Authority against the interlocutory order in L.P.A. directing it to pay the part of demand of property tax to Bombay Municipal Corporation issued by said D.B. by its judgment.

13. Though State Government has cited several judgments to show how Government Companies have been treated as distinct entities liable to pay property tax or non.agricultural tax as levied by State Governments, in view of the discussion above and direct judgment available on the point, I do not find it necessary to delve more in this controversy. Following observations in Western Coalfields Ltd. v. Special Area Development Authority, Korba (supra) clinch the issue:

20. 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 M. P. Municipalities Act and Section 136 of the M. P. 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 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, 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 (The Banks Nationalisation case) it was held:

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, and by a share in the profit.

21. In *Heavy Engineering Mazdoor Union v. The State of Bihar*, 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.

21A. The decision of this Court in the *Andhra Pradesh State Road Transport Corporation v. Income Tax Officer*, 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 --- 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. u/s 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 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?.

14. In *Electronics Corpn. of India, Ltd. v. Secy., Revenue Deptt., Govt. of A.P* (supra) also, it is observed that a clear distinction must be drawn between a company and its share-holder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares. In 1999 AIR SCW 4761 *Western Coalfields Ltd. v. Municipal Council, Birsinghpur Pali*; Hon. Apex Court has held that due to effect of order u/s 5 of Coal Mines (Nationalisation) Act (26 of 1973) , rights, title and interests of erstwhile owner of colliery which vested in Central Government on nationalization get vested in the Govt. company. Such Government company holds the colliery as its own & not on behalf of Central Government. Colliery is, therefore, not entitled to exemption from property tax. Discussion undertaken below by me in this judgment considers the argument that property does not vest in WCL and rejects it. Thus, in view the direct judgments of the point, it is apparent that the contentions raised on the strength of two judgments of learned Single Judges of this Court stands concluded against the Petitioners WCL.

15. Now the contentions about effect of clauses in document handing over the mine to WCL & language of relevant Sections of Coal Bearing Act & Nationalization Act deserves attention.

(A) Learned ASG Sharan has also argued that there is deeming fiction in Coal Bearing Act as also in Nationalization Act which has not been considered by any

of the judgments so far. It is difficult to accept this proposition as while delivering the judgments relevant provisions of law are noticed though the same may not be expressly mentioned. However in order to appreciate this controversy, relevant provisions need to be reproduced. Sections 3, 5 and 11 of the Coal Mines (Nationalization) Act, 1973, so far as they are relevant here are thus:

3. Acquisition of rights of owners in respect of coal mines.- (1) On the appointed day, the right, title and interest of the owners in relation to the Coal Mines specified in the Schedule shall stand transferred to, and shall vest absolutely in, the Central Government free from all encumbrances.

(2), (3), (4) and (5) ?

5. Power of Central Government to direct vesting of rights in a Government company- (1) Notwithstanding anything contained in Sections 3 and 4, the Central Government may, if it is satisfied that the Government company is willing to comply, or has complied with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, that the right, title and interest of an owner in relation to a coal mine referred to in Section 3, shall, instead of continuing to vest in the Central Government, vest in the Government Company either the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day), as may be specified in the direction.

(2) Where the right, title and interest of an owner in relation to a coal mine vest in a Government company under Sub-section (1) the Government Company shall, on and from the date of such vesting, be deemed to have become the lessee in relation to such coal mine as if a mining lease in relation to the coal mine has been granted to the Government company and the period of such lease could have been granted under the Mineral Concession Rules; and all the rights and liabilities, of the Central Government in relation to such coal mine shall on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively, of the Government company.

(3) The provisions of Sub-section (2) of Section 4 shall apply to a lease which vests in a Government company as they apply to a lease vested in the Central Government and references therein to the "Central Government" shall be construed as references to the Government Company.

11. Management, etc. of coal mines.- (1) The general superintendence, direction, control and management of the affairs and business of a coal mine, the right, title and interest of an owner in relation to which have vested in the Central Government u/s 3, shall-

(a) in the case of a coal mine in relation to which a direction has been made by the Central Government under Sub-section (1) of Section 5, vest in the Government company specified in such direction or"

(b) in the case of a coal mine in relation to which no such direction has been

made by the Central Government, vest in one or more custodians appointed by the Central Government under sub Section (2)

(2) The Central Government may appoint an individual or a Government Company as the Custodian of a coal mine in relation to which no direction has been made by it under sub Section (1) of Section 5.... Section 2(e) states that "Custodian" means the Custodian appointed under sub Section (2) of Section 11, to take over, or carry on, the management of a coal mine.

Thus, it is obvious that when Central Government makes a direction u/s 11(1)(a) the general superintendence direction control and management of the affairs and business of a coal mine as also the right, title and interest of Central Government in relation there to stands transferred to and vests in Government Company. Central Government u/s 3 succeeds to right, title and interest of the owner of coal -mine which it then passes on to Government Company u/s 5(1) of Nationalization Act. At least statute does not show that these rights get diluted in any way in the process. If no such direction is made, the same vests in Custodian appointed under Sub-section (2) above. Question is what is the purport of deeming fiction about the rights and liabilities of Central Government which or subject to which the property vests in Government Company.

(B) Scheme of Coal Bearing Act is not much different. Section 9 is final declaration of acquisition and relevant Sections 10 & 11 read as under:

Section 10. Vesting of land or rights in Central Government:

(1) On the publication in the Officials Gazette of the declaration u/s 9, the land or the rights in or over the land, as the case may be, shall vest absolutely in the Central Government free from all encumbrances.

(2) Where the rights under any mining lease granted or deemed to have been granted by a State Government to any person are acquired under this Act the Central Government shall, on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules had been granted by the State Government to the Central Government, the period thereof being the entire period for which such a lease could have been granted by State Government under those rules.

Section 11. Power of Central Government to direct vesting of land or rights in a Government Company: --

(1) Notwithstanding anything contained in Section 10, the Central Government may, if it is satisfied that a Government Company is willing to comply or has complied with such terms and conditions as the Central Government may think fit to impose, direct by order in writing, that the land or the rights in or over the land, as the case may be, shall instead of vesting in the Central Government u/s 10 or continuing to so vest, vest in the Government Company either on the date of publication of the declaration or on such other date as may be specified in the direction.

(2) Where the rights under any mining lease acquired under this Act vest in a Government Company under sub Section (1), the Government Company shall on and from the date of such vesting, be deemed to have become the lessee of the State Government as if a mining lease under the Mineral Concession Rules has been granted by the State Government to the Government Company, the period thereof being the entire period for which such a lease could have been granted by the State Government under those rules, and all the rights and liabilities of the Central Government in relation to the lease or the land covered by it shall, on and from the date of such vesting be deemed to have become the rights and liabilities of the Government Company.

It is obvious that after declaration u/s 9, the lands, whether private or otherwise forming subject-matter thereof or all the rights in relation there to either as lessee of State Government or otherwise vest in Central Government. Learned ASG Sharan has contended that in present case no mining lease has been acquired by Central Government under Coal Bearing Act and therefore neither Section 10(2) nor Section 11(2) have any application and Petitioners WCL cannot be treated as Lessee of State Government in relation to lands received by it under this Enactment. It is apparent that all types of rights can be acquired under Coal Bearing Act and vesting thereof is contemplated only u/s 10(1). Section 10(1) also covers vesting after acquisition of leasehold rights. Section 10(2) only provides for substitution of Central Government as lessee of State Government when rights under mining lease are acquired. The rights of original owner of those leasehold rights vest in Central Government under first part of Section 10 and Section 10(2) only regulates the relationship between Central Government and State Government concerning such mining lease by superimposing Central Government as lessee and by prescribing maximum possible duration therefor. Therefore, only Section 11(1) does not use or specify both parts of Section 10 separately. Otherwise, there is no mechanism in Section 11 enabling Central Government to transfer acquired mining lease to any Government Company. Section 11(1) is, therefore, the only provision which empowers Central Government to transfer rights vesting in it either as owner or then as lessee of State Government to such Government Company. This separation of rights as lessee of State Government or otherwise qua the acquired rights/land is not prescribed by legislature only for Central Government and the Government Company also substitutes itself in place of Central Government as lessee of State Government by virtue of Section 11(2). It is, therefore, apparent that whatever interests or rights Central Government procures under the scheme of Coal Bearing Act only, all those rights devolve upon Government Company u/s 11.

16. (A) It is here important to note that to demonstrate that Petitioner WCL does not have right to alienate any lands none of the provisions either of Coal Bearing Act or then of Nationalization Act have been pointed out. The document by which Central Government directed vesting of the property in WCL has only been shown. This document is under Coal Bearing Act and no copy of order of vesting

under Nationalization Act is filed. Copy of order dated 23rd December 1986 issued by Under Secretary to Government of India has been annexed as specimen along with all Petitions except WP 2604/2008. No order of vesting is annexed with WP 2604/2008. First paragraph of this specimen after disclosing 21st December, 1985 as the date of publication of notification u/s 9(1) of Coal Bearing Act mentions that lands and rights described in schedule appended to it vested absolutely free from all encumbrances in Central Government as per Section 10(1). Said schedule appended either to notification u/s 9(1) or to this specimen copy is not filed on record. Second paragraph is about satisfaction of Central Government that WCL, Nagpur i.e. present Petitioner was willing to comply with the terms and conditions Central Government thought it fit to impose. Third paragraph thereafter declares that said lands and rights so vested with effect from 21st December 1985 instead of continuing to so vest in Central Government shall vest in the Government Company subject to 5 terms and conditions stated below:

1. The Government Company shall reimburse the Central Government all payments made in respect of compensation, interests, damages and the like, as determined under the provisions of the said Act.
2. A Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the Government Company under condition (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and, similarly all expenditure incurred in respect of all legal proceedings like appeals, etc. or in connection with the rights in or over the said lands so vesting shall also be borne by the Government Company.
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vesting.
4. The Government Company shall have no power to transfer the said lands to any other person without the previous approval of the Central Government.
5. The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular area as and when necessary.

(B). This document ,therefore , clearly shows that rights in land as vested with Central Government have been passed over to Government Company (WCL) and power to transfer available to it has been permitted to be exercised only after previous approval of Central Government. The document itself shows that power to transfer has not been denied to Petitioner-Company. Petitioner-Company has to payback entire expenditure incurred by Central Government towards acquisition of land including compensation to the original owner and has also to indemnify Central Government for future expenditure in connection with said

proceedings. Thus as per this document Central Government does not pay anything from its treasury for the lands/leases and recovers everything from Petitioner WCL. Thus having paid for market value of acquired rights, it cannot be accepted that such acquired rights or property does not vest in WCL. Neither memorandum of association nor articles of association of WCL are placed on record to show that though a Government Company under Companies Act, it has not been authorized to acquire and hold property. Petitioner itself has stated some instances of direct purchases as source of acquisition of lands for its activities. Judgment of Hon Apex Court in case of Municipal Commissioner of Dum Dum Municipality v. Indian Tourism Development Corporation (supra) considered above, deals the nature of vesting of properties in International Airport Authority by virtue of Section 12 of International Airport's Authority Act, 1971 i.e. 1971 Act. Provisions of Section 12 along with its subsection (3) are reproduced in paragraph 11 & 12 of this report and then in paragraph 13 provisions of Chapter IV which sets out functions of the Authority are discussed. In report paragraph 14 Chapter V dealing with finance, accounts and audit are mentioned. It is also noticed that balance of its annual net profits remaining after meeting of its expenditure and after providing for reserves etc. is to be made over to Central Government by Airport Authority. Sections 21 to 24 which contain certain regulatory measures concerning the finances of Airport Authority are also noticed. Chapter VI with title "Miscellaneous" which require Authority to prepare and submit to Central Government annual report giving accounts of its activities during the financial year, activities proposed to be undertaken during next financial year, provision for placing such report before both houses of Parliament, provision in Section 31 stipulating that the Authority shall be deemed to be a company within the meaning of Income Tax Act, 1961 are all considered in paragraph 15 of this judgment by Hon Apex Court. Sections 33 and 34 which confer power upon Central Government to issue direction to Airport Authority to entrust management of Airport to any person after reasonable opportunity of being heard, operation of such arrangement for period of six months unless recalled earlier with power to extend it for further period not exceeding 18 months, power given by Section 34 to supersede Airport Authority in certain contingencies find consideration in paragraph 15 as also paragraph 16 of the report. In paragraph 21, Hon Apex Court has noted that after realising that business is to be carried on as a business and not in the manner of Governmental activity, Central and State Government's started creating corporations for carrying on these activities. Instances of several such corporations are given and it is noted that International Airport Authority is one such Corporation created by the Act. Is noticed that vesting u/s 12 is neither restricted nor temporary and property ceases to be property of Union of India. It is also noticed that vesting was no doubt for ensuring better management of airports but the said purpose underlying the creation of the Authority could not be read as a restriction or as the ground for curtailing the meaning of vesting. The argument in paragraph 18 about different shades of expression "vest" is considered in paragraph 22 which also shows consideration of argument that the

vesting of properties in Airport Authority was only for the purpose of managing those properties and ownership thereof never vested in the Authority. In para 23, Section 33 of 1971 Act is held to be a temporary and regulatory measure which usually finds place in enactment dealing with Co-operative Societies and Panchayat Raj institutions. In present Writ Petitions neither WCL nor State Government has pointed out any similar Sections or Scheme relevant for determination of nature of "vesting". Petitioner WCL has chosen to rely only upon above specimen copy of order. It only shows that when Union of India accepted an artificial person in the shape of WCL to substitute itself, certain regulatory measures have been made in the orders issued u/s 11(1) of Coal Bearing Act. The regulations do not deny right to transfer to Petitioner and in no way states that if transfer is permitted, Central Government will receive the consideration therefor. I, therefore, find that the specimen copy which accepts absolute vesting of property in Central Government substitutes WCL in place of Central Government as its absolute holder free from all encumbrances but subject to certain regulatory measures inherent in such type of arrangements. It shows that said right instead of continuing to so vest in Central Government has been made over to Petitioners and thus Central Government has ceased to be its holder. Observations of Hon Apex Court cited on behalf of Petitioners & in *Kalawatibai Vs. Soiryabai and others*, made in the background of Section 14(1) of Hindu Succession Act, 1956 explaining meaning of limited ownership are not applicable here.

17. (A) Effect of alleged "deeming fiction" needs to be considered in this background. Petitioners have urged that precedents are not Euclid's theorem and as effect of deeming fiction as contained in Section 5(2) of Nationalization Act has not been determined by any of the judgments cited on behalf of State Government, those judgments are not relevant authorities. The word "deemed" is used in different senses and it does not mean that a deeming provision is every time made for creating a fiction. A deeming provision may be with a view to include what is already obvious or what is uncertain or to signify an artificial meaning or construction of a word or phrase that would not have been normally possible. Thus in each situation a question as to with what object the legislature has made such a deeming provision falls for consideration. Here "deeming fiction" in Section 5 of Nationalization Act or in Section 11 of Coal Bearing Act is sought to be extended to transfer immunity from taxation provided to Union i.e. Central Government by Article 285 of Constitution of India to WCL. Said Article reads:

285. Exemption of property of the Union from State taxation.- (1) The property of the Union shall, save in so far as Parliament may by law otherwise provides, be exempt from all taxes imposed by a State or by any authority within a State.

Settled principles governing the interpretation of a deeming clause can be gathered from the case of *East End Dwellings Co. Ltd. v. Finsbury Borough Council* reported in 1951 (2) All ER 587. This quotation in judgment of the House

of Lords has been approved by the Supreme Court in a number of decisions. Commenting on the construction of a deeming clause, which creates a legal fiction, Lord Asquith explained the effect of such a fiction in the following words:

If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.

The statute says that one must imagine a certain state of affairs. It does not say that, having done so, one must cause or permit one's imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

The Court has to first ascertain the purpose behind incorporation of such deeming provision i.e. the need necessitating such a legal fiction in the scheme of law.

(B) Deeming fiction is being pressed into service by WCL to support its claim to the rights & liabilities of the Central Government. The purpose of Coal Bearing Act is to establish in the economic interest of India greater public control over the coal mining industry and its development by providing for acquisition by the State of unworked land containing or likely to contain coal deposits or of rights in or over such land, for the extinguishment or modification of such rights accruing by virtue of any agreement, lease, licence or otherwise and contains provisions for matters connected there with. u/s 10(1) of Coal Bearing Act the land or the rights in all over the land vest absolutely in Central Government free from all encumbrances. It is obvious that these rights are acquired by following the procedure under said Act Section 10(2) substitutes Central Government as Lessee of State Government if property acquired is lease rights under any mining lease. It is therefore obvious that the rights and liabilities of Central Government qua the acquired property under Coal Bearing Act & its earlier owner/holder are only envisaged in scheme of Section 10(1) and (2). Consequentially it follows that very same rights are also dealt with by Section 11. Same logic also holds good in relation to Section 5 of Nationalization Act. Section 5(1) actually mentions the right, title and interest of an owner in relation to the coal mine as the subject on which Central Government issues order in writing and directs its vesting in Government Company like WCL. It is an Act to provide for acquisition and transfer of the right, title and interest of the owners in respect to the coal mines specified in the schedule with a view to reorganizing and reconstructing such coal mines so as to ensure rational, coordinated and scientific development and utilization of coal resources consistent with the growing requirements of the country, in order that ownership and control of such resources are vested in the State and thereby so distributed as best to subserve the common good and to make provision for matters connected there with or incidentally thereto. It is therefore obvious that the object of both these Enactment/Acts is to divest private holding or ownership of coal mines and to make it over to in Central Government. Thus after completion of process of acquisition, the property or

rights forming subject matter of such acquisition vest absolutely in Central Government free from all encumbrances. The original holder or owners are entitled only to compensation as per the scheme of Acts but all their rights, title or interest in such property is lost. It is these lost rights which are being transferred to a Government Company through further Sections in respective Acts. The words "all the rights and liabilities, of the Central Government in relation to such coal mine" & "deemed to have become the rights and liabilities, respectively of the Government Company" used in Section 5(2) Nationalization Act, therefore, envisage only these rights of private owner/holder derived by Central Government. This is equally applicable even to words "and all the rights and liabilities of the Central Government in relation to the lease or the land covered by it shall, on and from the date of such vesting be deemed to have become the rights and liabilities of the Government Company." appearing at the end of Section 11(2) of Coal Bearing Act.

(C) Both these Acts do not deal with constitutional immunity available to Central Government because of Article 285(1) of Constitution of India and also constitutional rights and liabilities of Central Government and State Government qua each other. Not only this, there is no effort and intention to transfer constitutional immunity of Central Government to Government Company in said provisions. It is also clear that immunity provided for by Article 285 is conferred by Constitution on Central Government and it is a constitutional privilege which cannot be transferred or made over to any other functionaries unless and until Constitution of India is itself amended. Because of this position, neither Coal Bearing Act or Nationalization Act can be construed as even dealing with such immunity and therefore, nor Section 5 or Section 11 thereof, as the case may be, can be viewed as engulfing this aspect of immunity while using the words "all the rights and liabilities of Central Government". The words "free from all encumbrances" in respective Section 10(1) & 3(1) of respective Acts do not cover constitutional rights & liabilities. Moreover, even if "deeming scheme" in respective above Sections is presumed to cover within its sweep such immunity of Central Government, the same cannot be passed over to WCL by either Coal Bearing Act or Nationalisation Act. It is more than apparent that argument of "deeming fiction" in an attempt to reach such immunity is misconceived in present circumstances.

18. There is also challenge to competence of State Government to continue to levy or to demand non-agricultural tax after the lands are made over to WCL for its exploitation as coal mine.

(A) Discussion already undertaken above clearly shows that the immunity provided in Article 285 of Constitution of India sought to be invoked either directly by claiming that lands still vested in Central Government or then indirectly by stretching the so-called "deeming words" is not available to Petitioners. In "Electronics Corpn. of India, Ltd. v. Secy., Revenue Deptt., Govt. of A.P" (supra) in para 22, Hon. Apex Court observed that the provisions under

Sections . 2(j) and 12 of A.P. Non-Agricultural Land Assessment Act (14 of 1963) (as amended by Act 28 of 1974), are not ultra vires because Article 285 does not apply when the property to be taxed is not of the Union of India but of a distinct and separate legal entity. Each of the appellants before it being companies registered under Companies Act, were found to be entities other than the Union of India. Hon. Apex Court concluded that the question of reading down of provisions of Section 2(j) and Section 12 did not, therefore, arise. Hence challenge by pointing out provisions of Article 285 deserves to be rejected. The other aspect of legislative competence on part of State Government to demand tax or non-agricultural assessment on lands with WCL is squarely covered by the two judgments of Hon. Apex Court i.e. first reported at *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, , Korba & later at AIR 2005 S.C. 1646 "*State of West Bengal v. Kesoram Industries Ltd.* The later judgment is delivered by Constitutional Bench and majority therein approves the first judgment.

(B) In so far as *Western Coalfields Ltd. v. Special Area Development Authority, Korba* (supra) is concerned, I find reproduction of relevant paragraph from the judgment itself more appropriate.

23. 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 the Mines and Minerals (Development and Regulation) Act 1957. the legislative field covered by Entry 23, List II passed on to the Parliament by virtue of Entry 54, List I.

(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, co-ordinated and scientific development and utilisation of coal resources as best to subserve the common good.

(3) u/s 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.

(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.

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

24. 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 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 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) Act 1957 the legislative field covered by Entry 23 of List II will pass on to Parliament by virtue to 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 special areas lays down by Sub-section (4) that : Notwithstanding anything contained in the M. P. Municipal Corporation Act. 1956, the M. P. Municipalities Act, 1961, or the M. P. 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 functions 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 M. P. 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 1, the competence of the State Government to enact laws for municipal administration will remain unaffected by that declaration.

25. 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 Legislature 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.

26. 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 Vs. Collector of Chittoor and Another, , 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 the 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 Development) Act, 1957 is not in any manner defeated by the legitimate exercise of taxing power u/s 69 (d) of the Act of 1973.

27. The decision of this Court in Baijnath Kadio Vs. State of Bihar and Others, , on which the learned Attorney General relies, is distinguishable. The second Sub-rule added to Rule 20 was held to be without jurisdiction for the same reason.

28. 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 and Another Vs. Chanan Mal and Others*, . 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.

29. The decision of a Constitution Bench of this Court in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, , 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 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 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.

(C) In *State of West Bengal v. Kesoram Industries Ltd.* (supra) facts show that the constitutionality of the Cess Act, 1880, West Bengal Primary Education Act, 1973, West Bengal Rural Development and Production Act, 1976 as amended by the West Bengal Taxation Laws (Amendment) Act, 1992 whereby and where-under cess was levied on "coal", "tea", "brick-earth" and "minor minerals" was in question before it in batch of appeals and writ petitions. The Calcutta High Court had by its Judgment impugned before Apex Court in coal matters declared the cess imposed on coal to be unconstitutional relying on the decisions of Supreme Court in *India Cement Ltd. v. State of Tamil Nadu* and *Orissa Cement Ltd. etc. v. State of Orissa* and Ors. The core issue with which Hon. Apex Court was concerned was as to whether the legislative competence of the State to impose cess is traceable to Entries 49 and 50 of List II vis-a-vis Entries 52, 54 read with Entry 97 of List I of the Seventh Schedule of the Constitution of India.

(D) Perusal of minority view of Hon. Apex Court is helpful. There it was held that though Entry 49 of List II confers legislative competence upon the State to impose tax on "land" and "building", coal bearing land or mineral bearing land for the purpose of Entry 49, however, may not be equated with the land as ordinarily understood. Land in its ordinary meaning may be an agricultural land or a non-agricultural land. It may also be a mineral bearing land. Mineral bearing lands, however, are governed by the provisions of the 1957 Act and the Rules framed thereunder, so far as the same is covered by the declaration contained in the statute. In terms of the provisions of the said Act, cess, dead rent, as well as surface rent are payable. Therefore, as per minority view said Entry 49 of List II should be read in such a manner so that the surface land must have a direct nexus with the sub-soil right which is held an inchoate right. Indisputably, sub-soil right would include mineral right. Mining lease for mining of coal may be granted for huge area but depending on the nature of mining activities to be carried on, necessarily the mining lessee would not require the entire surface thereof except where mineral is being extracted by adopting quarrying method. As per said view, if a wide definition of coal bearing land is given so as to hold that the State is entitled to levy tax on extracted mineral which is severed from land, the same would lead to an incongruous result as thereby value of part of the land itself would be a subject-matter of measure of tax although they do not remain "land" as such. In any event, coal severed from land cannot be said to be yield on coal bearing land so as to hold that the value thereof can be determined only for the purpose of measure of tax vis-a-vis the nature and character thereof. While purporting to impose tax on land and buildings a State has the legislative competence in terms of Entry 49 of List II of the Constitution but it can not entrench upon Entry 52 or Entry 54 of List I thereof. The impugned levies under the State Acts however, having regard to nature of impost were declared to be not a tax on land as : (a) the impost was not directly on land. (b) the levy did not concern itself with any aspects of land i.e. extent of land, nature, character, quality or location thereof. In the case of mineral, as it is already embedded in the earth minority view of Apex Court states that there was no question of any yield because there could be no annual yield or annual income. The Hon. Apex Court in its minority view finds *Western Coalfields Ltd. v. Special Area Development Authority, Korba* (supra) not to be a good law.

(E) In this background the, perusal of majority view particularly paras 39,40,130,135 & 150 is useful. Hon. Constitution Bench by majority declares that the word "land" cannot be assigned a narrow meaning so as to confine it to the surface of the earth. It includes all strata above or below. In other words, the word "land" includes not only the surface of the earth but everything under or over it, and has in its legal significance an indefinite extent upward and downward. Ample authority is available for the concept that under Entry 49 in List II the land remains a land without regard to the use to which it is being subjected. It is open for the Legislature to ignore the nature of the user and tax the land. At the same time it is also permissible to identify, for the purpose of

classification, the land by reference to its user. While taxing the land it is open for the Legislature to consider the land which produces a particular growth or is useful for a particular utility and to classify it separately and tax the same. Different pieces of land identically situated otherwise, but being subjected to different uses, or having different potential, are capable of being classified separately without incurring the wrath of Article 14 of the Constitution. The tax would remain a tax on land and would not become a tax on the nature of its user. To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt any one of the well known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land. The judgment also lays down that the measure employed for assessing a tax must not be confused with the nature of the tax. A tax has two elements : First, the person, thing or activity on which the tax is imposed, and secondly, the amount of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and, therefore, the legislature has to be given much more flexibility in the later field. The mechanism and method chosen by Legislature for quantification of tax is not decisive of the measure of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

(F) Majority view in paragraph 135 elaborates the cardinal principles in a nutshell as under:

135. The relevant principles culled out from the preceding discussion are summarized as under:

(1) In the scheme of the Lists in the Seventh Schedule, there exists a clear distinction between the general subjects of legislation and heads of taxation. They are separately enumerated.

(2) Power of "regulation and control" is separate & distinct from the power of taxation and so are the two fields for purposes of legislation. Taxation may be capable of being comprised in the main subject of general legislative head by placing an extended construction, but that is not the rule for deciding the appropriate legislative field for taxation between List I and List II. As the fields of taxation are to be found clearly enumerated in Lists I and II, there can be no overlapping. There may be overlapping in fact but there would be no overlapping in law. The subject matter of two taxes by reference to the two Lists is different. Simply because the methodology or mechanism adopted for assessment and quantification is similar, the two taxes cannot be said to be overlapping. This is the distinction between the subject of a tax and the measure of a tax.

(3) The nature of tax levied is different from the measure of tax. While the subject of tax is clear and well defined, the amount of tax is capable of being measured in many ways for the purpose of quantification. Defining the subject of tax is a simple task; devising the measure of taxation is a far more complex exercise and therefore the legislature has to be given much more flexibility in the latter field. The mechanism and method chosen by Legislature for quantification of tax is not decisive of the nature of tax though it may constitute one relevant factor out of many for throwing light on determining the general character of the tax.

(4) Entries 52, 53 and 54 in List I are not heads of taxation. They are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures in spite of Union having enacted laws by reference to Entries 52, 53, 54 in List I. It is for the Union to legislate and impose limitations on State's otherwise plenary power to levy taxes on mineral rights or taxes on lands (including mineral bearing lands) by reference to Entry 50 and 49 in List II and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations.

(5) The Entries in List I and List II must be so construed as to avoid any conflict. If there is no conflict, an occasion for deriving assistance from non-obstante clause "subject to" does not arise. If there is conflict, the correct approach is to find an answer to three questions step by step as under:

One - Is still possible to effect reconciliation between two Entries so as to avoid conflict and overlapping?

Two - In which Entry the impugned legislation falls by finding out the pith and substance of the legislation? and

Three - Having determined the field of legislation wherein the impugned legislation falls by applying doctrine of pith and substance, can an incidental trenching upon another field of legislation be ignored?

(6) "Land", the term as occurring in Entry 49 of List II, has a wide connotation. Land remains land though it may be subjected to different user. The nature of user of the land would not enable a piece of land being taken out of the meaning of land itself. Different uses to which the land is subjected or is capable of being subjected provide basis for classifying land into different identifiable groups for the purpose of taxation. The nature of user of one piece of land would enable that piece of land being classified separately from another piece of land which is being subjected to another kind of user, though the two pieces of land are identically situated except for the difference in nature of user. The tax would remain a tax on land and would not become a tax on the nature of its user.

(7) To be a tax on land, the levy must have some direct and definite relationship with the land. So long as the tax is a tax on land by bearing such relationship with the land, it is open for the legislature for the purpose of levying tax to adopt

any one of the well known modes of determining the value of the land such as annual or capital value of the land or its productivity. The methodology adopted, having an indirect relationship with the land, would not alter the nature of the tax as being one on land.

(8) The primary object and the essential purpose of legislation must be distinguished from its ultimate or incidental results or consequences, for determining the character of the levy. A levy essentially in the nature of a tax and within the power of State Legislature cannot be annulled as unconstitutional merely because it may have an effect on the price of the commodity. A State legislation, which makes provisions for levying a cess, whether by way of tax to augment the revenue resources of the State or by way of fee to render services as quid pro quo but without any intention of regulating and controlling the subject of the levy, cannot be said to have encroached upon the field of "regulation and control" belonging to the Central Government by reason of the incidence of levy being permissible to be passed on to the buyer or consumer, and thereby affecting the price of the commodity or goods. Entry 23 in List II speaks of 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. Entries 52 and 54 of List I are both qualified by the expression "declared by Parliament by law to be expedient in the public interest". A reading in juxtaposition shows that the declaration by Parliament must be for the "control of industries" in Entry 52 and "for regulation of mines or for mineral development" in Entry 54. Such control, regulation or development must be "expedient in the public interest". Legislation by the Union in the field covered by Entries 52 and 54 would not like a magic touch or a taboo denude the entire field forming subject matter of declaration to the State Legislatures. Denial to the State would extend only to the extent of the declaration so made by Parliament. In spite of declaration made by reference to Entry 52 or 54, the State would be free to act in the field left out from the declaration. The legislative power to tax by reference to Entries in List II is plenary unless the entry itself makes the field "subject to" any other entry or abstracts the field by any limitations imposable and permissible. A tax or fee levied by State with the object of augmenting its finances and in reasonable limits does not ipso facto trench upon regulation, development or control of the subject. It is different if the tax or fee sought to be levied by State can itself be called regulatory, the primary purpose whereof is to regulate or control and augmentation of revenue or rendering service is only secondary or incidental.

(9) The heads of taxation are clearly enumerated in Entries 83 to 92B in List I and Entries 45 to 63 in List II. List III, the Concurrent List, does not provide for any head of taxation. Entry 96 in List I, Entry 66 in List II and Entry 47 in List III deal with fees. The residuary power of legislation in the field of taxation spelled out by Article 248(2) and Entry 97 in List I can be applied only to such subjects as are not included in Entries 45 to 63 of List II. It follows that taxes on lands and buildings in Entry 49 of List II cannot be levied by the Union. Taxes on

mineral rights, a subject in Entry 50 of List II can also not be levied by the union though as stated in Entry 50 itself the union may impose limitations on the power of the State and such limitations, if any, imposed by the Parliament by law relating to mineral development and to that extent shall circumscribe the States' power to legislate. Power to tax mineral rights is with the States; the power to lay down limitations on exercise of such power, in the interest of regulation, development or control, as the case may be, is with the Union. This is the result achieved by homogeneous reading of Entry 50 in List II and Entries 52 and 54 in List I. So long as a tax or fee on mineral rights remains in pith and substance a tax for augmenting the revenue resources of the State or a fee for rendering services by the State and it does not impinge upon regulation of mines and mineral development or upon control of industry by the Central Government, it is not unconstitutional.

(G). In relation to .Coal Matters. before it, the Hon. Apex Court observes:

136. The amendments incorporated by the West Bengal Taxation Laws (Amendment) Act 1992 w.e.f. 1- 4-1992 into the provisions of the West Bengal Primary Education Act 1973 and the West Bengal Rural Employment and Production Act 1976 classify the land into three categories: (i) coal-bearing land, (ii) mineral bearing land (other than coal bearing land) or quarry and (iii) land other than the preceding two categories. These three are well-defined classifications by reference to the user or quality and the nature of product which it is capable of yielding. The cess is levied on the land. The method of quantifying the tax is by reference to the annual value thereof. It is well-known that one of the major factors contributing to the value of the land is what it produces or is capable of producing. Merely because the quantum of coal produced and dispatched or the quantum of mineral produced and dispatched from the land is the factor taken into consideration for determining the value of the land, it does not become a tax on coal or minerals. Being a tax on land it is fully covered by Entry 49 in List II. Assuming it to be a tax on mineral rights it would be covered by Entry 50 in List II. Taxes on mineral rights lie within the legislative competence of the State Legislature "subject to" any limitation imposed by Parliament by law relating to mineral development. The Central legislation has not placed any limitation on the power of the States to legislate in the field of taxation on mineral rights. The challenge to constitutional validity of State legislation is founded on non-availability of legislative field to State; it has not been the case of any of the writ petitioners that there are limitations enacted by Central legislation and the State of West Bengal has breached or crossed those limits. Simply because incidence of tax is capable of being passed on to buyers or consumers by the mine owners with an escalating effect on the price of the coal, it cannot be inferred that the tax has an adverse effect on mineral development. Entry 23 in List II speaks of regulation of mines and mineral developments, subject to the provisions of List I with respect to regulation and development under the control of the Union. The Central Legislation has taken over regulation and development of mines and mineral development in public interest. By

reference to Entry 50 of List II and Entry 54 in List I, the Central legislation has not cast any limitations on the State Legislature's power to tax mineral rights, or land for the matter of that. The impugned cess is a tax on coal-bearing and mineralbearing land. It can at the most be construed to be a tax on mineral rights. In either case, the impugned cess is covered by Entries 49 and 50 of List II. The West Bengal Taxation Laws (Amendment) Act 1992 must be and is held to be intra vires the Constitution.

(H) It is therefore obvious that in spite of land being coal bearing & used for coal extraction, the State Government does not loose its power of taxation under Entry 49 of State List as declared in para 135(4) above by the Constitutional Bench. The land does not cease to be the land for the purposes of entry 49 in State List as per the majority view. Judgement of Hon. Patna High Court in *Managing Director, National Coal Development Corporation v. State of Bihar* (supra) is on issue of liability to pay dead rent when there is no lessor-lessee relationship and lands acquired were virgin one. It is not relevant here. Again I find it appropriate to rely on similar evaluation by the 5 Hon. Judges of A.P. High-Court. A.P. Full Bench in *M/s. Mahabaleswarappa and Sons, Bellary and Vs. Commissioner of Land Revenue, Govt. of A.P., Hyderabad and others*, , rejected the challenge to Section 3 of A.P. Non-Agricultural Land Assessment Act (14 of 1963 alleging absence of legislative competence after scrutinizing Schedule 7, List 2, Entry 49, List 1, Entry 86 and Article 246 of Constitution of India. Hon. High Court held that Section 3 empowers the State to determine assessment on non-agricultural lands and for the purpose of quantifying the assessment, user of the land i.e., industrial, commercial or nonagricultural, is to be taken into consideration. From the plain language employed in Section 3, it is vivid that the assessment is on the land itself, subject of course to the classification into different categories of the region on the basis of population and the purpose for which it is put to use. According to Entry 49 of List II of VII Schedule read with Article 246(3) of the Constitution, the State Legislature is competent to make laws with respect to levying taxes on lands and buildings. The assessment under the NALA Act is on the land and not on the purpose for which it is used. The aim and object of the Act can also be seen from the preamble itself. The unambiguous language employed in the preamble would reveal that the assessment is on the lands and not on the use to which they are put and that the intention of the Legislature is to assess non-agricultural lands. Further, a reading of Entries 18, 45, and 49 of the List II would reveal that the State Legislature is competent to legislate in respect of land, the rights in or over the land, its tenure, with regard to revenue including assessment, collection of revenue and also with regard to levy of tax on lands and buildings. Thus power is exclusively vested in the State Legislature to levy tax on the land, whether agricultural or nonagricultural. The Hon. Judges held that the "assessment" levied under the NALA Act cannot be said to be an assessment alone, but it is more of a tax. The contention that there is no power to the State to legislate the enactment imposing assessment as it relates to Entry 86 of List I was held to be not tenable.

(I) There is no challenge to constitutional validity of Maharashtra Land Revenue Code before me. Contention is it can not apply to coal bearing lands or mines with WCL due to central legislation under Entry 54 of List I. Observations in para 135(4) of the Constitutional Bench judgment of Hon. Apex Court are complete answer to these arguments & sufficient to reject it. Rule 72 of Mineral Concession Rules relied upon by Adv. Sharan does not deal with land revenue or NA assessment but it requires officer appointed by the State Government to determine the surface rent as compensation & WCL has to pay it to person who owns the surface land on which mining is undertaken. It is thus a compensation and Sub-rule 2 & 3 directly link its quantum with annual agricultural yield or average letting value of similar land for previous three years. It is not a substitute for tax under Entry 49 in List II. It can not be said that the Union has legislated and imposed limitations on State's otherwise plenary power to levy taxes on lands by reference to 49 in List II and laid down any limitations on State's power.

19. The argument about unauthorised change of user by WCL calls for consideration now.

(A) Purpose and object behind enacting Coal Bearing Act and Nationalisation Act is already mentioned in brief above. It is not in dispute that steps for acquisition or steps after Nationalisation are for the purposes of extraction of coal. It is also not in dispute that Section 2(h) of Nationalisation Act has got a very wide sweep and includes even the lands and buildings used for residence of officers and staff of the mine. In fact by its Sub-clause (XII) all other fixed assets, movable and immovable, belonging to owner of mine, wherever situated and current assets belonging to mine whether within its premises or outside are also included in said definition. Both these Acts emanate from Entry 54 of List I of Schedule 7 of Constitution of India. From very defence of State Government, it is apparent that vesting of these lands or rights in or over these lands in WCL is an accepted position. Provisions under Maharashtra Land Revenue Code & of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as Act No. 67 of 1957) with 1960 Rules framed thereunder need to be scrutinized. Whether there is any overlapping & if yes, its effect and consequential erosion of power in State are the parameters flowing from exercise already completed above.

(B) The provisions of Maharashtra Land Revenue Code from Section 41 onwards till Section 48 deal with question of user of lands. Section 41 permits holder of any land assessed or held for the purpose of agriculture to be used for the purpose of agriculture. The erection of form house for carrying out any work for renewal of or alteration of such form building requires the permission of the Collector. The Collector has been also authorised not to grant such permission if the area of land is less than 0.4 Hectare. There are certain other conditions but in present matter, those conditions are not very relevant. Section 42(1) does not permit agricultural land to be used for agricultural area then to use any particular

agricultural purposes to any other agricultural purposes or for same purpose but for relaxation of any of the conditions. Section 43 permits Government or the Collector or Survey Officer authorized by it, to regulate or prohibit the use of land liable for payment of land revenue. By Section 42(2) permission for conversion of use is declared to be not necessary for person bonafide residential purpose in non-urban area. Section 42 makes it obligatory for a person to seek permission from the Collector for converting use of land to any nonagricultural purpose. Procedure to be followed for seeking such permission is prescribed u/s 44. An application is required to be submitted in the prescribed format, along with all necessary documents and giving necessary information. Collector can grant or refuse the permission on the grounds like public health, safety, convenience etc. Permission can also be refused if proposed use of land is contrary to any Scheme relating to planned development. Section 44, Sub-section (1) of the Code specifies the person who can move such application. Section 44(2) makes it obligatory for the Collector to acknowledge the application within seven days. The Collector can return the application, if it is not made by the occupant or the superior holder or if it does not comply with all the requirements prescribed in this behalf. If the requirements are complied with, the Collector has to conduct an inquiry and either grant or refuse permission. Section 44-A states that no permission is required to convert any land held for agricultural purpose or for a particular nonagricultural purpose if it is situated within industrial zone of a draft or final regional plan prepared under Maharashtra Regional and Town Planning Act, 1966, or within agricultural zone of any plan and the Development Control (Regulations) Act or Rules framed thereunder permit industrial use of that land. Section 45 prescribe penalty for using land for other purpose unauthorisedly i.e. without permission. Section 47 permits State Government to exempt any land or class of land from operation of provisions of Sections 41, 42, 44 and 45. Section 47A imposes responsibility upon holder to pay additional land revenue called as conversion tax on account of change of user of land. Section 41A declares title of government to miner minerals. The State Government has framed Maharashtra Land Revenue (Reconstruction of Land) Rules, 1968 and Rule 4 thereof prohibits excavation of agricultural land. Under Rule 5, excavation of building site is also not permitted without permission. Rule 6 requires previous permission for excavation of unalienated gaathan sites.

(C) The provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as Act No. 67 of 1957) need to be looked into in the background of above provisions under Maharashtra Land Revenue Code. Section 18 of this Act casts duty upon the Central Government to take all such steps as may be necessary for conservation and systematic development of minerals in India and for protection of environment by preventing or controlling any pollution and to make rules for that purpose. Sub-section (2) gives heads under which the Rules can be framed. Some of the heads are opening of new mines and regulation of mining operations, regulation of excavation or collection

of minerals from any mine, the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of suitable contrivances for such purpose, the regulation of prospecting operations, disposal or discharge of waste slime or tailings. Section 2 of this Act declares that the Parliament has found it expedient in public interest that Union of India should take under its control the regulation of mines and the development of minerals to the extent provided in the Act No. 67 of 1957. The first schedule to the Act in its Part A dealing with Hydrocarbons/Energy minerals specifies Coal. In view of Section Sub-section (3), State Government after prior consultation with Central Government and as per Rules made u/s 18, can undertake reconnaissance, prospecting or mining operation with respect of coal. Section 5(1) prohibits State Government from granting licence for this purpose to any person without previous approval of Central Government. Section 7(2) again does not permit State Government to renew such license except with previous approval of Central Government. The Mineral Concession Rules 1960 (hereinafter referred to 1960 Rules), are framed under Act No. 67 of 1957 and its Chapter IV deals with grant of mining leases. Rule 22 prescribes the form of application for grant of mining lease and its Sub-rule (3) Clause (h) requires the applicant to declare whether the land is not owned by him, whether he has obtained surface rights over the area or has obtained the consent of owner for starting mining operations. Sub-rule (4) requires State Government to take decision to grant precise area for the said purpose and thereafter the applicant has to furnish a mining plan to the Central Government for its approval. After mining plan is approved, the applicant has to submit it to State Government for grant of mining lease over said area. Rule 22(4A) permits State Government to approve mining plans in relation to certain minerals but then it does not include coal. Sub-rule (5) lays down ingredients which must be incorporated in mining plan and those ingredients require the plan of the lease hold area showing the nature and extent of mineral body, spot or spots where the mining operations are proposed, details of geology and lithology of the area, extent of manual mining or mining by use of machinery, natural water resources, limits of reserves and other forest areas, density of tress, assessment of impact of mining activity on forest, land surface and environment including air and water pollution, details of scheme of restoration of area by afforestation, land reclamation, use of pollution control devices, a tentative scheme of mining and annual programme and plan for excavation from year to year for five years, a progressive mine closure plan. This plan once approved is followed for entire duration of the lease. The Hon''ble Apex Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, , in para 52 has held that mining operations cannot be commenced forthwith merely on approval of mining plan and scheme by Central Government. A mining lease holder is required to comply with other statutory provisions such as Environment (Protection) Act, 1986, Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974, Forest (Conservation) Act, 1980. It is also observed that measures to be taken by lessee for protection of environment are required to be strictly complied with. Rule 22A requires that

mining operations must be undertaken in accordance with duly approved mining plan. Rule 22B requires mining plan to be prepared by recognised qualified persons and Rule 22C confers power on Central Government to approve persons possessing qualifications and expertise as mentioned in Sub-rule (2) of Rule 22B, as recognised persons for preparation of said plans. Rule 22D states that minimum size for grant of mining lease shall not be less than 1 Hectare for small deposits, 2 Hectare in respect of beach sand & placers and 4 Hectares in respect of other mineral deposits.

(D) Rule 27 deals with conditions of mining lease. Rule 27(1)(d) requires lessee to pay for the surface area used by him as surface rent and water rate at such rate not exceeding the land revenue, water and cesses assessable on the land as prescribed by the State Government. Clause (h) requires him not to carry mining operation within 50 meters from any railway line except in accordance with written permission of Railway department. He can not carry any mining under or beneath any rope way except in accordance with written permission of authority owning the rope way. He also can not carry mining operation within 50 meters from any reservoir, canal, or other public work or buildings, except in accordance with prior permission of State Government. Clause (s) requires him to take immediate measures for planting and to look after these trees planted till they are handed over to State Forest Department and to restore to the extent possible other flora destroyed by mining operations. Rule 27(2) speaks of other conditions which State Government may deem necessary to impose and those are in relation to payment of rents and royalties, payment of compensation for damage to land covered by lease, felling of trees, securing of pits and shafts etc. Sub-rule (3) permits State Government to impose such further conditions as may be found necessary in the interest of mineral development either with the previous approval of Central Government or at the instance of Central Government. Rule 28 deals with the circumstances in which lease lapses. Rule 29 deals with restrictions on determination of lease, Rule 29A prohibits lessee from determining lease or part thereof unless final mine closure plan approved by the Regional Controller or the officer authorized by the State Government is implemented. Rule 30 deals with right of lessee which included the right to work the mines, to sink pits and shafts and construct buildings and roads, to erect plant and machinery, to quarry and obtain building and road materials and make bricks, to use water and take timber, to use land for stocking purposes. Rule 31 states that after an order has been made for grant of lease, lease deed in form .K. or in a form as near thereto as circumstances permit, shall be executed within six months from the said order. The date of commencement of the period of mining lease is the date on which duly executed deed under Sub-rule (1) of Rule 31 is registered.

(E) From these provisions in the Act No. 67 of 1957 & 1960 Rules framed, it is clear that the Parliament has through it made all provisions necessary for securing the proper regulation and development of mining activity on the land which is sought to be leased out as contemplated therein. The lands come to

WCL through various modes already stipulated above. More elaborate, comprehensive & technically complete scheme for regulation & development of mine therefore covers the field of change of user of land. sought to be occupied by the relevant provisions of Maharashtra Land Revenue Code. It is more effective to guard public interest & subserve public good as compared with Maharashtra Land Revenue Code to regulate the aspect of change of user. State Government can not be permitted to stall the exploitation of coal bearing land for mine through the Maharashtra Land Revenue Code on that account. Thus, in cases where the leases are specifically for the purposes of coal mine and are subject to provisions of Act No. 67 of 1957, it is more than apparent that said provisions have to prevail over the provisions of Maharashtra Land Revenue Code. State Government therefore can not complain of alleged unauthorised change of user and claim any penalty or fine in that respect.

(F) At the time of nationalisation of coal mines, there was already change of user from agriculture to nonagricultural/commercial or Industrial one. When steps for acquisition of land or interest therein or then to acquire lease hold rights are initiated, it is obvious that the purpose is well known to all including State Government which is party to said initiation & action. After the lands vest in Central Government as per the scheme of respective Acts, State Government cannot take any step which will have the effect of preventing or delaying appropriate user of such property as mine by it or then by Government Company. Any procedure or provision in any enactment of State which tends to control, defeat or delay actual putting of land to the use for which it is taken up by the Central Government i.e. of having or running a coal-mine definitely militates with Entry 54 and to that extent is unworkable and void. The decision of a Constitution Bench of this Court in *Ishwari Khetan Sugar Mills (P.) Ltd. v. State of U. P.* (supra) holds that the legislative power of the State under 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. This position is reiterated by the Hon. Apex Court in para 24 in *Western Coalfields Ltd. v. Special Area Development Authority, Korba* (supra) & in para 135 in *"State of West Bengal v. Kesoram Industries Ltd.* (supra). It is settled that the inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely exhaustively, or exclusively what shall be the law governing the particular conduct or matter to which its attention is directed. When a Central statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter. Central Statute here is more scientific and a special legislation of all pervasive nature. It therefore follows that in relation to such lands coming to WCL from Central Government or State Government for use or development as a mine the procedure prescribed in Maharashtra Land Revenue Code for

conversion or change of user is not applicable and hence no penalty/fine can be recovered by State Government for alleged unauthorised change of user by WCL. This however does not mean that land revenue at rate prescribed for such type of nonagricultural user cannot be demanded from it by State Government.

20. WCL has relied upon form .K. to urge that State can not demand land revenue as per stipulation in its part VII.

(A) While considering this issue, the agreement between WCL & State Government under Nationalisation Act is important & it needs to be perused. As already stated in the beginning of this judgment, no direction or order granting lands to WCL u/s 5 of Nationalisation Act are produced before me. However, Respondent No 2 Tahasildar has filed affidavit in W. P. 1161/2007 on 31st August 2007 and in it, in paragraph No 9 has given relevant details, insofar as their claim of non-agricultural tax against W. C. L. in Chandrapur district is concerned as under:

Source of land for W. C. L. Extent in Hectors

I -- land acquired under Coal Bearing Act. 816.82

II -- land acquired under Nationalisation Act. 289.41

III -- land acquired under Land Acquisition Act. 926.73

IV--land granted under Maharashtra Land Revenue Code. 167.23

V-- land purchased by direct negotiations. 156.12

VI -- land given by Forest Department. 3.69

VII -- land encroached by WCL. 136.52

The total land with the WCL at Chandrapur is stated to be 2464.32 Hectors. This affidavit discloses that the Revenue Authorities have imposed fine & demanded amount of Rs. 15 crores on account of occupancy charges as well as fine in respect of the encroached land. W.C.L. has paid Rs. 95,36,602/-- on 9/1/2007 and Rs. 48,79,000/-- on 30/3/2007 practically accepting the encroachment. This position declared on affidavit has not been specifically disputed before me during arguments. There are no contentions raised about the said amount of Rs 15 Crores or payment made on two dates mentioned above by W. C. L. during oral arguments. In W. P. 1106/2007, WCL has mentioned in paragraph 15 that all lands in respect of which impugned assessment orders were served upon it have been acquired or received on Nationalization of Coal mines by it from different sources under different enactments. Attention is invited to chart annexed as Annexure D with that petition. In W. P. 1161/2007, In W. P. 1110/2007 & W. P. 975/2007 same statement has been repeated. Annexure D shows that land has come to WCL through the first 5 sources i.e. lands acquired under Coal Bearing Act, lands acquired under Nationalisation Act, lands acquired under Land Acquisition Act, lands granted under Maharashtra Land Revenue Code and lands

purchased by direct negotiations. All these four petitions and W. P. 19/2008 are in relation to lands with WCL at Chandrapur. Grievance in relation to lands at Yavatmal is made in W. P. 3430/2007 and in it in paragraph 12 same statement has been made about the source of land. W. P. 2604/2008 is about lands in Nagpur in paragraph 12 again general statement on same lines has been made. Annexure I with this writ petition shows that lands have come to WCL under the first 5 sources mentioned above even in Nagpur district. Respondents have not filed any specific reply in relation to sources of lands with WCL in Nagpur district and Yavatmal district.

(B) However, specimen copy of lease agreement if any executed between State Government and WCL has not been filed on record. Form "K" on which Petitioner WCL has placed reliance is model form of mining lease prescribed by Rule 31 of the Mineral Concession Rules 1960. These rules are framed under the Act No. 67 of 1957 and by virtue of Section 13 thereof. Said Section 13 enables Central Government to make rules for regulating the grant of mining leases by notification in Official Gazette. Petitioner WCL has specifically argued that it has not received any lands u/s 10(2) or Section 11(2) of Coal Bearing Act as no rights under mining leases were acquired under that Act by Central Government. It is therefore apparent that form "K" has no relevance insofar as lands coming to W. C. L. under Coal Bearing Act are concerned. First clause/paragraph of part VII which deals with the covenants of lessee in form .K. obliges Lessee to pay rent, water rate royalties, taxes, rates, assessments and impositions whatsoever being in the nature of public demand, except the land revenue. It is not in dispute before me that non-agricultural tax is land revenue and because of this paragraph .1. WCL states that it is exempt from paying non-agricultural tax to State Government. However, in none of the petitions there is specific assertion that WCL is lessee in relation to a particular land for which non-agricultural tax demand has been made from it. In spite of previous orders of this Court, these details or then copy of lease agreement, if any, in relation to lands forming subject matter of recovery are not produced before this Court. Grounds in Writ Petitions show only a contention that lease agreements existed between earlier owners of Coal mines and State Government before nationalization. During arguments, form "K" was sought to be relied upon with Section 5(2) of Nationalisation Act to point out that WCL is lessee of State Government. It is clear that demand of amount of non-agricultural tax in relation to/of lands acquired under Land Acquisition Act, privately by direct purchase i.e. through negotiations has not been even attempted to be connected with said form "K". In relation to remaining lands received by it under Coal Bearing Act the only argument was that Central Government continues to be its owner and said lands do not vest in W. C. L. Hence, the fact that remaining lands with WCL i.e. purchased directly, acquired by it by paying compensation via Land Acquisition Act, Coal Bearing Act given to it directly by State Government under Maharashtra Land Revenue Code etc. are not covered under said exemption in form "K" is clear on record.

(C) "State of T.N. v. Adhiyaman Educational and Research Institute" (supra) considers Section 10 of All India Council for Technical Education Act (52 of 1987) with Section 3, T.N. Private Colleges (Regulation) Act (19 of 1976),. Article 254, Schedule 7(1)- Entry 66, Entry 25 in Concurrent List of Constitution of India & Section 19(ii) of Madras University Act (7 of 1923), & holds that the power to grant or withdraw Permission to Start Technical Institution is given to body created under said Act. Therefore a Body created under State Act cannot exercise such power and that provisions in University Act, contrary to Central Act are unenforceable. The institutions cannot be derecognised or disaffiliated on the ground that they do not fulfil the higher requirements under the State Act although they fulfil the requirements under the Central Act. So also, when the power to recognise or derecognise an institution is given to a body created under the Central Act. it alone can exercise the power and on terms and conditions laid down in the Central Act, It will not be open for the body created under the State Act to exercise such power much less on terms and conditions which are inconsistent with or repugnant to those which are laid down under the Central Act. State of West Bengal v. Kesoram Industries Ltd. (supra) points out that Entries 52, 53 and 54 in List I are not heads of taxation but are general entries. Fields of taxation covered by Entries 49 and 50 in List II continue to remain with State Legislatures even after Union makes laws under general entries. It is for the Union to legislate and impose limitations on State's this otherwise plenary power to levy taxes and lay down the limitations on State's power, if it chooses to do so, and also to define the extent and sweep of such limitations. Rule 31 of the Mineral Concession Rules prescribes Form .K. as the form applicable to leases as far as possible. Stipulation in Form .K. has thus statutory sanction behind it & hence, it overrides right of State Government to demand land revenue to that extent.

(D) Hence, if there are any lands/leases with WCL to which paragraph 1 of part VII of form "K" is applicable, State Government can not demand any land revenue in relation there to.

21. In the result, all Writ Petitions are partly allowed & demands or action for recovery therein on lands in relation to which there is lease agreement between parties in form .K. of 1960 Rules are only quashed & set aside. Similarly the demand of fine & penalty by the State Government on account alleged unauthorised change of user by Petitioner WCL of lands for mine in its possession legally is also quashed & set aside. Rest of the claims in all Writ Petitions are hereby rejected. Rule thus made absolute in part in all Petitions accordingly without any order as to costs.