

PETITIONER:
THE BOARD OF TRUSTEES FOR THE VISAKHAPATNAM PORT TRUST

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH & ORS.

DATE OF JUDGMENT: 17/07/1999

BENCH:
D.P.Wadhwa, M.B.Shah

JUDGMENT:

D.P. Wadhwa, J.

A common question of law in both these appeals is: if the Board, i.e., Board of Trustees of Visakhapatnam Port Trust is exempt from taxation under Article 285 of the Constitution from levy of property tax by the Visakhapatnam Municipal Corporation, constituted under Visakhapatnam Municipal Corporation Act, 1979 (Civil Appeal No. 1810 of 1988) and also from levy of non agricultural land tax by the Visakhapatnam Mandal under the Non- Agricultural Lands Assessment Act, 1968. Contention of Mr. Kailash Vasudev, learned counsel appearing for the Board is that the properties are not owned by the Board and the vesting of the properties in the Port Trust is only for the purpose of administering them and they in fact remained the properties owned by the Union of India and thus exempt from taxation under Article 285 of the Constitution. Under this Article property of the Union of India is exempt from all taxes imposed by the State or by any authority within a State.

The Board of Visakhapatnam Port Trust is constituted under the Major Port Trust Act, 1963. Constitution of the Board is described in Section 3 of the Act. Under Section 5 Board shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold or dispose of property and may by name by which it is constituted, sue or to be sued. Chapter IV of the Act deals with "Property and Contracts". Under clause (a) of Section 29 all property, assets and funds and all rights to levy rates vested in the Central Government or, as the case may be, any other authority for the purposes of the port immediately before the appointed day, shall vest in the Board. Under Section 32 of the Act when any immovable property is required for the purposes of the Board, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 (1 of 1894), and on payment by the Board of the compensation awarded under that Act and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board.

Our attention was drawn to Section 110 of the Act, which provides for power of the Central Government to supersede the Board. Under sub-section (2) of this Section all the properties vested in the Board shall, until the

Board is reconstituted, vest in the Central Government. On this an argument was raised that the Board is not the absolute owner of the properties and that only the management of these properties vest with the Board.

We do not think that this argument has any basis. This Court in *Municipal Commissioner of Dum Dum Municipality and others vs. Indian Tourism Development Corporation and others* (1995 (5) SCC 251), considered the same argument in the case of International Airport Authority that the vesting of the properties was only for the purpose of managing those properties and ownership of the properties did not vest in the Authority. In that case this Court was deliberating the provisions of the International Airports Authority Act, 1971 under which International Airport Authority of India was constituted. The provisions of that Act are *pari materia* with the Major Port Trust Act, 1963 regarding the constitution, property and contracts and supercession. It is not necessary to quote the provisions of the International Airports Authority Act, 1971 to show that how they are similar to the provisions in the Major Port Trust Act, 1963. This Court negated the argument that the properties vested in the International Airport Authority of India for the purpose of managing those properties and that the ownership of these properties continued to be with the Central Government. The Court held that the properties vest in the International Airport Authority of India and it could not be said that the Central Government owned the properties. Board in the present case is not a department of the Central Government rather it has the attributes of a company. It is distinct from the Central Government. It cannot, therefore, claim exemption from taxation under Article 285 of the Constitution.

In a Constitution Bench decision of this Court in *Electronics Corporation of India Ltd. etc. etc. vs. Secretary, Revenue Department, Government of Andhra Pradesh and others etc. etc.* (1999 (4) SCC 458 = 1999 (3) SCALE 125), it was held that the Electronics Corporation of India Ltd., a Government company, was distinct from the Central Government and Article 285 was not applicable in the case of a Government company. Following the ratio in the aforesaid two decisions it has to be held that Board is not exempt from taxation under Article 285 of the Constitution.

Accordingly Civil Appeal No. 1810 of 1988 is allowed and Civil Appeal Nos. 1997-98 of 1990 are dismissed with costs.