

**HIGH COURT OF GUJARAT (D.B.)**

**STATE OF GUJARAT  
V/S  
BOARD OF TRUSTEES OF PORT OF KANDLA**

**Date of Decision:** 20 October 1978

**Citation:** 1978 LawSuit(Guj) 119

**Hon'ble Judges:** [A D Desai](#), [A M Ahmadi](#)

**Eq. Citations:** 1979 (1) GLR 732

**Case Type:** Letters Patent Appeal; Letters Patent Appeal

**Case No:** 22 of 1976; 216 of 1976

**Subject:** Constitution

**Head Note:**

[A] Consit. of India, 1950 - Art.295 - Major Port. Trusts Act (XXXIII of 1963) - Sec.29(1) - Investing of property in state - When the M.P.T. Act enforced,the property of the part of Kandala were vested in the Union of India. [B] Major Prot Trusts Act (XXXIII of 1963) - Sec.29(1) - Vesting of property in trustees only for the administration purpose - Central Govt. not directing itself completely of its ownership - Expression vest explained - Provision of paying a lumpsum payment of tax to Municipality is not contra indication regarding vesting of property in the state - Vesting of property therefore limited in nature. [C] Major Port Trusts Act (XXXIII of 1963) - Sec.29 - Constitution of India,1950 - Art. 285 - As vesting in Board is not absolute property belonging to Central Govt. such property,therefore immuned form State Taxation under Art.285.

Art. 295(1)(a) of the Constitution provides that as from the commencement of this Constitution all property and assets which immediately before such commence-

ment were vested in any Indian State corresponding to a State specified in Part B of the 1st Schedule shall vest in the Union if the purposes for which such property and assets were held immediately before such commencement will thereafter be of the Union relating any of the matters enumerated in the Union List. It thus becomes clear from the aforesaid provisions in the Constitution that all property and assets which were vested in the Crown for the purposes of the Government of the Dominion of India came to vest in the Union of India. Before Kutch became a part C State under the Constitution it was a Chief Commissioners Province under the control and management of the Governor General of the Dominion of India. Therefore even after Kutch became a Part C State under the Constitution its property and assets vested in the Union. (Para 15) Major Port Trusts Act (XXXIII of 1963) - Sec. 29(1) - Vesting of property in trustees only for purposes of administration - Central Government not divesting itself completely of its ownership - Expression vest explained - Provision regarding lump sum payment of tax to Municipality is not contra indication regarding vesting of property in the State- Vesting of property therefore limited in nature. The Preamble of the Major Port Trusts Act 1963 makes it clear that the Act was enacted to provide for the constitution of port authorities for certain major ports and to vest the administration control and management of such ports in such authorities. It becomes clear from these powers and functions entrusted to the Board that the statute expects the Board to act as the agent of the Central Government which would but for this statutory delegation be expected to exercise such powers and perform such duties. (Para 20) The term vest has more than one meaning and to find its exact connotation we must look to the Scheme of the law and the context in which it is used. The setting in which it is used would lend colour to it and divulge the legislative intent. Viewed from this point of view it is clear that the vesting of property in the Board is for the limited purpose of administration control and management only without the Central Government having divested itself of ownership. What was vested in the Board by sec. 29(1)(a) of the Major Port Trusts Act had to be taken care of and on the supersession of the Board provision had to be made to vest the property in the Central Government. There was no need to make a separate provision for vesting of property in the Central Government in the event of supersession of the Board. (Para 26) Provision was made for lump sum payment of taxes to the Municipality in consideration of the Municipality having undertaken to maintain keep in good repair cleanse and light the roads and thorough-fares declared public as also the roadway of any wharf dock or pier vested in the trustees. It is for these services

rendered by the Municipality that provision was made for lump sum payment of tax to the Municipality in lieu of general tax. If for service rendered a special provision is made for the payment of lump sum tax to the Municipality under sec. 36 of the Act it cannot be validly contended that the said circumstance provides a sure indication that the property no longer belonged to the Government. (Para 32) The schemes of the three Statutes viz. Bombay Port Trust Act 1879 Calcutta Port Trust Act 1890 and the Madras Port Trust Act 1905 do not militate against the view that the Parliament by incorporating corporate bodies under the Statutes created an agency for carrying out the purposes of the respective Acts and for that limited purpose the properties came to be vested in the said agencies. Therefore if vesting by clause (a) of sub-sec. (1) of sec 29 of the 1963 Act is limited to vesting in possession no anomaly is likely to be created even under the scheme of the three sister Statutes. (Para 35) Major Port Trusts Act (XXXIII of 1963) - Sec. 29- Constitution of India 1950 - Art. 285 - As vesting in Board is not absolute property belonging to Central Government such property therefore immuned from State taxation under Art. 285. Vesting in the Board is not absolute but is for limited purpose of administration control and management only. The lands and buildings falling within the area of Port of Kandla therefore continue to belong to the Central Government and hence the immunity of Art. 285 of the Constitution would be available to the Central Government. The State Government therefore cannot recover the non- agricultural assessment sought to be recovered. (Para 36) Board of Trustees of Port of Kandla & Ors. v. State of Gujarat & Ors. confirmed. Satya Dev Bushahri v. Padam Dev & Ors. State of Vindhya Pradesh (Now the State of M P.) v. Moula Bux and Ors. Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust The A. P. State Road Transport Corp. v. Income-tax Office Maharaj Singh v. State of Uttar Pradesh & Ors. Sukhdev Singh & Ors. v. Bhagatram Sardar Singh & Anr. referred to.

**Acts Referred:**

[Constitution Of India Art 285, Art 295](#)

[Major Port Trusts Act, 1963 Sec 29\(1\)](#)

**Final Decision:** Appeal dismissed

**Advocates:** [I R Nanavati](#), [B R Shah](#), K S Nanavati, [R A Mehta](#)

**Reference Cases:**

**Judgement Text:-**

Ahmadi, J

[1] These two Letters Patent Appeals, one by the State of Gujarat and the other by the Gandhidham Municipality, are directed against the judgment of our learned brother S. H. Sheth, J. in a writ petition brought under Article 226 of the Constitution of India, being Special Civil Application No. 748/74, by the Board of Trustees of the Port of Kandla, (hereinafter called the Board) challenging the right of the State Government to recover non-agricultural assessment in the sum of Rs. 56,06, 400/-for the revenue years 1963-64 to 1970-71 in respect of lands vesting in the Board by virtue of cl. (a) of sub-sec. (1) of sec. 29 of the Major Port Trusts Act (Act XXXIII of 1963). Questions of some complexity arise in these appeals and they shall have to be determined in the light of the material facts set out hereunder :

[2] The Maharao of Kutch was the ruler of the Indian State of Kutch. He conceived of the idea of developing a port at Kandla and translated it into action some time in 1931 or thereabouts. On the coming into force of the Indian Independence Act, 1947 (1947 Act), Kutch became a sovereign State with effect from 15th August, 1947, the suzerainty of the British Crown having lapsed. In pursuance of the provisions of the 1947 Act, the Maharao of Kutch executed an instrument of accession on 4th May, 1948 ceding to the Dominion of India and followed it up by an agreement called "The Kutch Merger Agreement" executed on 1st June, 1948, whereunder he conceded to the Dominion Government full and exclusive authority, jurisdiction and power for and in relation to his State and agreed to transfer the administration of the State to the Dominion Government. Consequently, the Central Government came to enjoy absolute, exclusive and plenary authority, jurisdiction and power over the territories of the erstwhile Indian State of Kutch; (he Maharao, who was the sovereign ruler of Kutch, having ceded his State to the Dominion of India on the latter's assurance to respect the Ruler's personal rights, privileges and dignities and to pay an annual privy purse. Thus all properties of the Indian State of Kutch vested absolutely in the Central Government.

[3] After the execution of the Instrument of Accession and the Merger Agreement, the Port of Kandla was under the administration of the Chief Commissioner of the Province.

On 26th January, 1950, when the Constitution was given to the people of India, Kutch became a part 'C' State. On 31st January, 1950 the Central Government in exercise of powers conferred by cl. (a) of sub-sec. (1) of sec. 4 of the Indian Ports Act, 1908 (1908 Act) extended the provisions of the said Act to the Port of Kandla with effect from 1st April, 1950. In the said notification the limits of the Port of Kandla were defined. On 9th February, 1953 the Union of India directed the Chief Commissioner of Kutch to transfer 346.5 sq. miles of land to, the Port Authorities. By a subsequent notification dated 29th March, 1955 issued by the Central Government in exercise of powers conferred by sub-sec. (8) of sec. 3 of the 1908 Act, the Port of Kandla was declared a "Major Port" with effect from 8th April, 1955. The Constitution of India was amended by the Constitution (Seventh Amendment) Act, 1956. By the said amendment the First Schedule to the Constitution was also amended and with regard to the territories comprising the State of Bombay, by sub-sec. (1) of sec. 8 of the States Reorganisation Act, 1956, the territories of the existing State of Kutch became part of the newly formed Part 'A' State of Bombay. After the bigger bilingual State of Bombay thus came into existence from 1st November, 1956, the State was bifurcated on 1st May, 1960 into the State of Maharashtra and the State of Gujarat and the Port of Kandla fell within the territories comprising the State of Gujarat. The Major Port Trusts Act, 1963 (1963 Act) was given force from 29th February, 1964 and since the Port of Kandla had already been declared to be a Major Port with effect from 8th April, 1955, the provisions of the 1963 Act became applicable to the said port. The Board of Trustees of the Port of Kandla came to be constituted under sec. 3 of the 1963 Act and as provided by sec. 5 of the said Act, the Board so constituted is a body corporate entitled to acquire, hold or dispose of property. By clause (a) of sub-sec. (1) of sec. 29 of the 1963 Act, all property, assets and funds vested in the Central Government or any other authority for the purposes of the port immediately before the appointed day became vested in the Board.

**[4]** The contention of the State Government is that by virtue of clause (a) of sub-sec. (1) of sec. 29 of the 1963 Act, the ownership in the lands comprising the Port of Kandla, which vested in the Central Government before the Act came into force on 29th February, 1964, stood statutorily transferred to the Board, a distinct and separate statutory entity, and hence, the State Government is entitled to recover non-agricultural assessment in respect of the said lands. On the aforesaid line of reasoning adopted by the State Government, the Mamlatdar of An jar by his communication-Ann. A -dated 24th December, 1970 demanded a sum of Rs. 56,06,400/-from the Board on account of non-agricultural assessment of the lands under its control and management for the period from the year 1963-64 to 1970-71. The Board made a representation against the

demand on 16th June, 1971 to the State Government but the Collector of Kutch by his letter dated 24th April 1974 - Ann. B - informed the Board that the Government of Gujarat was of the view that the Board was liable to pay non-agricultural assessment on lauds within the Port of Kandla as demanded by the Mamlatdar, Anjar and necessary arrangements should, therefore, be made to pay the amount to Mamlatdar, Anjar, tender intimation to him. It is this demand made by the Mamlatdar, Anjar, which came to be challenged by the Board in Special Civil Application No. 748 of 1974. Our learned brother S. H. Sheth, J. who disposed of the said writ petition, took the view that by virtue of cl. (a) of sub-sec. (1) of sec. 29 of the 1963 Act, the properties comprising the Port of Kandla belonged to the Central Government and vested in the Board only for the limited purpose of administration, control and management but the ownership in the said properties continued to remain with the Central Government and, hence, the lands were immune from State taxation in view of Art. 285 of the Constitution. It is this view taken by our learned brother which is assailed in the present two appeals by the State Government and the Gandhidham Municipality.

**[5]** The Gandhidham Municipality, which was impleaded as a party to the writ petition on its own application, on the other hand contends that the lands comprising the Port of Kandla initially belonged to the Indian State of Kutch and thereafter to the Dominion of India. On the coming into force of the Constitution of India, it became the property of Part 'C' State and thereafter of the bigger bilingual State of Bombay. Again on bifurcation of the said State on 1st May, 1960 it became part of the State of Gujarat. It is, therefore, argued that the properties comprising the Port of Kandla did not belong to the Central Government when the 1963 Act came into force and hence the property vested absolutely in the Board under clause (a) of sec. 29(1) of the 1963 Act as the property belonging to 'any other authority' and the checks and controls found in the Statute to be exercised by the Central Government at different stages cannot make the vesting limited to possession only. Alternatively it was argued that even if the Court comes to the conclusion that before the 1963 Act came into force the property comprising the Port of Kandla belonged to the Central Government, there is nothing in the statute to give a restricted meaning to the word 'vest' in clause (a) of sub-sec. (1) of sec. 29 of the 1963 Act.

**[6]** The contention of the Board is that before the 1963 Act came into force, all the lands and buildings comprising the Port of Kandla belonged to the Central Government and by virtue of cl. (a) of sub-sec. (1) of sec. 29 of the 1963 Act, the administration, control and management in respect of the said lands and buildings was transferred to the Board but

the Central Government did not divest itself of the ownership in the said lands and buildings and, hence, the properties within the administrative control of the Board are immune from State taxation in view of Art. 285 of the Constitution, which reads as under :

"285. The property of the Union, shall, save in so far as Parliament by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State."

The Central Government which was allowed to be added as a correspondent in both the appeals supports this view canvassed before us on behalf of the Board.

**[7]** The rival contentions set out above give rise to the following questions.

1. Whether the lands and buildings comprising the Port of Kandla were the property of an authority other than the Central Government before 29th February, 1964 when the 1963 Act came into force :
2. Whether the vesting of the property by virtue of cl. (a) of sub-sec. (1) of sec. 29 of the 1963 Act in the Board was in the nature of vesting in possession only and not vesting in title; and
3. Whether the State Government was legally entitled to recover the non-agricultural assessment from the Board as claimed by the Mamlatdar, Anjar, by his letter dated 24th December, 1970-Ann. A to the petition.

We shall now proceed to answer these questions in the light of the submissions made by the learned counsel at the bar.

**[8]** We may first consider the constitutional background. It is common knowledge that in the 19th century India was a land of multitude of States and principalities. Almost 2/3rd of the territory was then under the British rule through the East India Company and even in respect of the remaining 1/3rd the paramountcy of the British Crown was undisputed.

By the Government of India Act, 1858, the territories in the possession or under the Government of East India Company and the properties and rights held by the said Company in trust for Her Majesty for the purposes of the Government of India ceased to vest in the said Company and became vested in Her Majesty. This position continued till the Government of India Act, 1935 (1935 Act) came to be enacted.

**[9]** By sec. 2 of 1935 Act all rights, authority and jurisdiction appertaining or incidental to the Government of territories in India vesting in His Majesty before the Act came into force and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India continued to be exercisable by His Majesty unless otherwise provided by or under the Act or direction issued by His Majesty; provided that any powers connected with the exercise of functions of the Crown in its relations with Indian States were, if not exercised by His Majesty, to be exercised only by or by persons acting under the authority of His Majesty's representative for the exercise of those functions of the Crown. Sec. 5 empowered His Majesty to declare by proclamation that as from the appointed day there shall be united in a Federation under the Crown (a) the Provinces called the Governors' Provinces and (b) the Indian States which had acceded or may accede in future in the Federation and in the Federation so established the Chief Commissioner's Provinces were included. Sec. 6 declared that a State shall be deemed to have acceded to the Federation if His Majesty signifies his acceptance of instrument of accession executed by the Ruler of the State declaring that subject to the terms of the instrument His Majesty or the Federal Authorities named therein may, for the purpose only of the Federation exercise in relation to his State such functions as may be vested in them by or under the Act and that he assumes the obligation of ensuring that due effect is given within his State to the provisions of the Act. The Governor's Provinces were set out in sec. 46 and the Chief Commissioners' Provinces were enumerated in sec. 94 of the 1935 Act. A conjoint reading of Secs. 122 and 128 shows that the executive authority of the Federated State had to be exerted so as to give respect for Federation laws and not to impede or prejudice the exercise of executive authority of the Federation exercisable in the State. It is thus obvious that before 1947 the Rulers of Indian States enjoyed a degree of sovereignty subject to the varying degree of suzerainty exercised over them by the British Crown and were indisputably entitled to certain rights, privileges and immunities.

**[10]** On the enactment of the Indian Independence Act, 1947(1947 Act) the position of the former Rulers of Indian States underwent a fundamental change. The suzerainty which the British Crown had over the Indian States lapsed and with it ended all the



treaties and agreements then in force between the Crown and the Rulers of the Indian States. Consequently, all the functions exercised by the British Crown at that date with respect to such States, all obligations existing at that date towards such States and their Rulers and all powers, rights, authority and jurisdiction exercisable in relation to such States also came to an end. Two independent Dominions known as the Dominion of India and the Dominion of Pakistan were set up with effect from 15th August, 1947. It was provided by sec. 8" that powers of the legislature of the new Dominion shall, for the purpose of making provision as to the constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of the concerned Dominion. Till such time as other provision is made by law enacted by the Constituent Assembly, it was provided that the Dominion shall be governed, as nearly as may be, in accordance with the 1935 Act.

**[11]** In exercise of powers conferred by Secs. 8(2), 9(1) (c) and 19(4) of the 1947 Act, the Indian (Provisional Constitution) Order, 1947 was made which inter alia replaced Secs. 5 and 6 of the 1935 Act. The newly substituted sec. 5 said that the Dominion of India shall from August 15, 1947 be a Union comprising (a) the Provinces hereinafter called the Governors' Provinces, (b) the Provinces hereinafter called the Chief Commissioners' Provinces; (c) the Indian States acceding to the Dominion in the manner hereinafter provided and (d) any other areas that may with the consent of the Dominion be included in the Dominion. The newly added sec. 6 substituted the word "Dominion" for the word "Federation" and spoke of the "Governor General" signifying his acceptance to the instrument of accession instead of "His Majesty". Thus the Indian States acceding to the Dominion of India became integrated in the Union of India.

**[12]** The Extra-Provincial Jurisdiction Act, 1947 was enacted to provide for the exercise of certain Extra-Provincial Jurisdiction of the Central Government. The expression "Extra-Provincial Jurisdiction" meant "any jurisdiction which by treaty, agreement, grant, usage, sufferance or other lawful means the Central Government had for the time being in or in relation to any area outside the Provinces and the term "jurisdiction" included all rights, power and authority. Sec. 3 empowered the Central Government to exercise Extra-Provincial Jurisdiction in such manner as it thought fit. Sec 4 empowered the Central Government to make such orders as may seem to it expedient for the effective exercise of any Extra-Provincial jurisdiction. Sec. 5 validated every act and thing done whether before or after the commencement of the Act in pursuance of any Extra-Provincial Jurisdiction of the Central Government in an area outside the Provinces as if it had been done according to the local law then in force in that area. If any question

arose in any proceeding, civil or criminal, in a court established in the Provinces or by the authority of the Central Government outside the Provinces, as to the exercise or extent of any Extra-Provincial Jurisdiction of the Central Government the decision of the Central Government on the question was final for the purpose of such proceedings. To complete the narration it may here be stated that by sec. 3 of the Merged States (Laws) Act, 1949, the Acts, Ordinances and Regulations specified in the Schedule were extended to the new Provinces and by sec. 5 existing Acts, Ordinances and Regulations corresponding to the Acts, Ordinances and Regulations specified in the Schedule were repealed in their application to the new provinces i.e. Province constituted by the States' Merger (Chief Commissioner's) Order, 1949.

**[13]** Two new Secs. 290A and 290B came to be inserted in the 1935 Act by the Government of India (Amendment) Act, 1949, with effect from 15th January, 1949. The material part of sec. 290A reads as under :

"290A. Administration of certain Acceding States as a Chief Commissioner's Province or as part of a Governor's or Chief Commissioner's Province :-

(1) Where full and exclusive authority, jurisdiction and powers for and in relation to the governance of any Indian State or of any group of such states are for the time being exercisable by the Dominion Government, the Governor-General may by order direct :

(a) that the State or the group of States shall be administered in all respects as if the State or the group of States were a Chief Commissioner's Province; or

(b) that the State or the group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's Province specified in the order :

Provided that if any Order made under clause (b) of this sub-section affects a Governor's Province, the Governor-General shall before making such Order, ascertain the views of the Government of that Province both with respect to the proposal to make the Order and with respect to the provisions to

be inserted therein.

(2) Upon the issue of an order under cl. (a) of sub-sec. (1) of this section, all the provisions of this Act applicable to the Chief Commissioner's Province of Delhi shall apply to the State or the group of States in respect of which the Order is made."

The rest of the sub-sections are not material for our purpose. Sec. 290B, which is not very material for our purpose dealt with the administration of areas included within a Governor's Province or a Chief Commissioner's Province by an Acceding State.

**[14]** In pursuance of the aforesaid newly added sec. 290A, the Governor General promulgated (i) The States' Merger (Governor's Provinces) Order, 1949 and (ii) The States' Merger (Chief Commissioner's Provinces) Order, 1949 which came into effect from 1st August, 1949. The first Order defines the expression "Central purposes" in sec. 2 (c) to mean "the purposes of Government relatable to any of the matters mentioned in the Federal Legislative list". Sec. 3 says that as from the appointed day (1st day of August, 1949) the States specified in each of the Schedules shall be administered in all respects as if they formed part of the Provinces specified in the heading of that schedule and accordingly any reference to an acceding State in the Government of India Act, 1935 or to any Act or Ordinance made on or after the appointed day shall be construed as not including a reference to any of the merged States and any reference in any such Act or Ordinance as aforesaid to a Province specified in the Schedule to this Order shall be construed as including the territories of all the States specified in that Schedule. Sec. 5 next provides that all property, wherever situate which immediately before the appointed day is vested in the Dominion Government for purpose of the governance of a merged State shall as from that day vest in the Government of the absorbing Province unless the purposes for which the property is held immediately before that day are central purposes. The Second Order provides that as from the appointed day (1st day of August, 1949) the parts of the States specified in the Second Schedule to this Order shall be administered in all respects as if they were a Chief Commissioner's Province and shall be known as Chief Commissioner's Province of Kutch. It was emphasised that in the second Order which deals with the Chief Commissioner's Province of Kutch, there is no provision similar to sec. 5(1) found in the First Order, which omission, counsel

argued, establishes that the properties vested in the State of Kutch and, hence, a separate provision like sec. 5 (1) of the First Order was considered unnecessary. This submission clearly overlooks Secs. 172 and 173 of the 1935 Act which came to be deleted by the Indian (Provisional Constitution) Order, 1947. Sec. 94(3) of the 1935 Act provides that the Chief Commissioner's Provinces shall be administered by the Governor General acting to such extent as he thinks fit through a Chief Commissioner. Sec. 172 for the first time made provision for the vesting of the lands and buildings situate in the Province in His Majesty for the purpose of the Government of that Province unless they were used for the purpose of the Federal Government or for the exercise of the functions of the Crown in relation to Indian States in which case they would vest in His Majesty for the purposes of the Federation. Sec. 173 provides that subject to the provisions of this and the last preceding section, all property vested in His Majesty which, by virtue of the delegation from the Secretary of State in Council or otherwise, is immediately before the commencement of Part III of this Act in the possession or under the control of or held on account of the Governor General in Council or any Local Government or as from the commencement of Part III of the Act, vested in His Majesty (a) for the purposes of the Government of Federation or (b) for the purpose of the exercise of functions of the Crown in relation to Indian States or (c) for the purpose of the Government of Province, according as the purpose for which the property was held immediately before the commencement of the said Part, will thereafter be purposes of the Government of the Federation, purposes of His Majesty's representative for the exercise of said functions of the Crown or purposes of the Government of a Province. On the deletion of these two sections by the Indian (Provisional Constitution) Order, 1947, such division of the property ceased. It, therefore, became necessary to reintroduce a provision vesting property in the Government of the Province and sec. 5(1) of the States' Merger (Governor's Province) Order, 1949 satisfied this need. It was unnecessary to make a similar provision in the States' Merger (Chief Commissioner's Provinces) Order, 1949 as the properties in respect of those provinces already vested in the Dominion of India which was charged with the duty to administer the said provinces. Mr. Shah's attempt, therefore, to contend that the absence of a provision similar to sec. 5(1) of the States' Merger (Governor's Province) Order, 1949 in the sister Order concerning the Chief Commissioner's Provinces, lends support to his view that the property vested in the State of Kutch and not in the Dominion of India cannot succeed. We also cannot accept his contention that even during the reign of the Ruler of Kutch, in regard to the vesting of property, the State of Kutch had a distinct personality of its own different from the Sovereign, a concept unknown to the monarchical rule in those days. In our view, therefore, the above

statutory changes make it crystal clear that before the advent of the Constitution of India, the property comprising the erstwhile Princely State of Kutch vested in the Dominion of India.

**[15]** That takes us to the next crucial stage. The Constitution of India was given to the people of India on 26th January, 1950. Art. 1(3), as it then stood, laid down that the territory of India shall comprise (a) the territories of the States; (b) the territories specified in Part D of the 1st Schedule and (c) such other territories as may be acquired. Art. 1(2) divided the States into Part A, B and C as in the 1st Schedule. Kutch is shown as one of the Part C States. Part VIII of the Constitution beginning with Art. 239 and ending with Art. 242 dealt with Part C States. We need notice Art. 239(1) which provided that "subject to other provisions of this Part, a State specified in Part C of the 1st Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner.....to be appointed by him.....". Taking clue from the languages of Art. 29, Mr. Shah vehemently contended that whatever may be the position prior to the Constitution, on the coming into force of its Constitution, Kutch became a separate Part C State and was placed under the administration of the President who acted through the Chief Commissioner. Referring to the definitions of "Part C State" and "State" in Secs. 3(41) and 3(58) of the General Clauses Act, counsel emphasised that the separate entity of the State of Kutch becomes crystal clear, more so by the definition of "State Government" in sec. 3(60) of the said Act. Placing strong reliance on the following observations of the Supreme Court in *Satya Dev Bushahri v. Papam Dev and Ors.*, A.I R. 1954 S.C. 587 at 591 :

"The President who is the executive head of the Part C States is not functioning as the executive head of the Central Government, but as the head of the State under powers specifically vested in him under Art. 23). The authority conferred under Art. 239 to administer Part C States has not the effect of converting those States into the Central Government. Under Art. 239, the President occupies in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of Art. 239, they do not cease to be States and become merged with the Central Government."

It was argued that merely because the State was under the administrative control of the President, it cannot be said that the property of Part C State

vested in the Central Government. Reliance was also placed on the State of Vindhya Pradesh (Now the State of Madhya Pradesh) v. Moula Bux and Others, A.I.R. 1962 S. C. 145, wherein the question which arose for consideration was whether the suit against the State of Vindhya Pradesh was properly framed or should have been directed against the Union of India and the Supreme Court relying on the decision in Satya Dev (supra) held that the suit was competent. It was urged that both these decisions clearly support the submission of the learned counsel for the Municipality. The fallacy in this line of reasoning is that it ignores the historical background discussed earlier as well as the relevant provisions of the Constitution which deal with the question of succession of property and assets to the Union and the State. Art. 294(2) provides that as from the commencement of the Constitution, all properties and assets which immediately before such commencement were vested in His Majesty for the purpose of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purpose of the Government of each Governor's Provinces shall vest respectively in the Union and the corresponding State. Art. 295(1)(a) makes a similar provision in regard to Part B States and says that as from the commencement of this Constitution, all property and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the 1st Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will, thereafter, be purposes of the Union relating any of the matters enumerated in the Union List. It thus becomes clear from the aforesaid provisions in the Constitution that all property and assets which were vested in the Crown for the purposes of the Government of the Dominion of India come to vest in the Union of India. Before Kutch became a part C State under the Constitution, it was a Chief Commissioner's Province under the control and management of the Governor General of the Dominion of India. Therefore, even after Kutch became a Part C State under the Constitution its property and assets vested in the Union. In the decisions relied upon, the Supreme Court was not concerned to decide whether or not the property of Part C States vested in the Union Government. Hence the two cases cited at the bar cannot be said to be apposite. The State Government has, therefore, advisedly not

contended that the lands comprising the Port of Kandla did not vest in the Central Government before the 1963 Act came into force.

**[16]** The Constitution of India was amended by the Constitution (Seventh Amendment) Act, 1956. Clause (2) of Article 1 was substituted and the new clause provides that the State and the territories thereof shall be as specified in the First Schedule. The First Schedule to the Constitution was amended by sec. 12 of the States Reorganization Act, 1956(1956 Act) and in regard to the territories comprising the State of Bombay reference has been made to the territories specified in sub-sec. (1) of sec. 8 of the States Reorganisation Act, 1956. The relevant part of that sub-section provides that as from the appointed day (1 st November, 1956) there shall be formed a new Part A State to be known as the State of Bombay comprising amongst others (e) the territories of the existing State of Kutch. Thus the territories of the existing State of Kutch ceased to form part of Kutch and became merged in the State of Bombay.

**[17]** An interesting development which has relevance to the point under consideration may now be noticed. On 31st January, 1950 the Government of India in exercise of powers conferred by sub-sec. (1) (a) of sec. 4 of the Indian Ports Act, 1908 (1908 Act) extended the provisions of the Act to the Port of Kandla with effect from 1st April, 1950 and defined the limits of the said port under the said notification. Subsequently by another notification dated 29th March, the Central Government in exercise of powers conferred by cl. (8) of sub-sec. (3) of the 1908 Act declared that the Port of Kandla, as defined in the notification of 31st January, 1950, shall be a 'Major Port' with effect from 8th April, 1955. Entry 27 in the Union List refers to ports declared by or under law made by Parliament or existing law to be Major Ports, including their delimitation and the constitution and powers of port authorities therein. The limits of the Port of Kandla were extended by two subsequent notifications dated 11th July, 1962 and 1st March, 1968 issued by the Central Government in exercise of powers conferred by sec 4 of the 1908 Act. It will thus appear from the above discussion that the Port of Kandla was declared a Major Port in 1955 i e. before the 1956 Act came into force. As has been made clear in the preceding paragraphs of this judgment, the territories of the erstwhile State of Kutch vested in the Central Government before the 1956 Act came into force. For the first time by sec. 8(1) of the 1956 Act the territory of the erstwhile State of Kutch became part of the new State of Bombay. Secs. 94 and 95 of the 1956 Act contained in Part VIII may now be set out. They read as under :

"94. In this Part -

(a) "existing State" means any of the existing Part C States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh;

(b) "Union purposes" mean the purposes of Government relatable to any of the matters mentioned in the Union List.

95. Subject to the other provisions of this Part :-

(a) such of the assets of the Union within an existing State as are immediately before the appointed day held by the Union for purposes of the governance of that State shall, as from that day, pass to the successor State, unless the purposes for which the assets are so held are Union purposes; and

(b) all liabilities of the Union arising out of, or in relation to, the governance of an existing State shall, as from the appointed day, be liabilities of the successor State, unless the liabilities are relatable to a Union purpose."

On a conjoint reading of these two provisions it becomes crystal clear that the assets of the Union within the existing State as were immediately before the appointed day held for Union purposes, did not vest in the new State. As pointed out earlier, before the 1956 Act came into force, Kandla was declared as a Major Port and was under the governance of the Central Government as such. Major Ports being covered by entry 27 of the Union List would make the purpose for which the assets of the State were held a Union purpose and, therefore, by virtue of the aforesaid two provisions in the 1956 Act, the territories of the Port of Kandla, as delimited by the notifications referred to earlier, would not vest in the State Government. That being the obvious position, the contention that the territories of the Port of Kandla did not vest in the Central Government on the day the 1963 Act came into force, is clearly misconceived.



**[18]** Before we proceed to decide the nature of the vesting it is necessary to examine some of the provisions of the 1908 Act and the scheme of the 1963 Act. The Indian Ports Act, 1908 was enacted to consolidate the enactments relating to Ports and Port authorities. Sub-sec. (4) of sec. 3 defines a "Port" and sub-sec. (8) defines a "Major Port" as 'any Port which the Central Government may by notification in the Official Gazette declare as Major Port'. Cl. (a) of sub-sec. (1) of sec. 4 empowers the Government to extend the provisions of the Act to any port. In exercise of powers conferred by the said clause, the Central Government by notification dated 31st January, 1950 extended the provisions of the Act to the Port of Kandla with effect from 1st April, 1950 and therein defined the limits of the said Port as required by sub-sec. (2) of sec. 4 of the Act. Subsequently by another notification dated 29th March, 1955 the Port of Kandla, as defined by the earlier notification, was declared a "Major Port" with effect from 8th April, 1955 under sub-sec. (8) of sec. 3 of the Act. Subsequently the area of the Port of Kandla was varied by notifications dated 11th July, 1962 and 1st March 1968 issued under sec. 4 of the Act as is clear from the maps marked X,Y and Z produced with the affidavit of Shri K. J. Notani, Senior Assistant Manager-cum-Public Relations Officer of the Board of Trustees of the Port of Kandla dated 25th September, 1978.

**[19]** The Major Port Trusts Act, 1963 was enacted to provide for the constitution of Port authorities for certain Major Ports including the Port of Kandla and to vest the administrative control and management of such Ports in such authorities and for matters connected therewith. This Act was brought into force with effect from 29th February, 1964. Sub-sec. (3) of sec. 1 says that the Act shall, in the first instance, apply to the Major Ports of Cochin, Kandla and Vishakhapatnam. It is necessary to examine the scheme of this Act in some detail as the controversy centres round the meaning to be assigned to the term "vest" in clause (a) of sub-sec. (1) of sec. 29 of this Act. The Act is divided into XI Chapters. We will refer to only such of the provisions in these XI Chapters as are necessary for unfolding the scheme of the Act. Sec. 2 which contains the dictionary of the Act defines a "Board" in relation to a Port to mean "the Board of Trustees constituted under the Act for that Port". According to sec. 2(m) Major Port has the same meaning as in the 1908 Act. "Port" means "any Major Port" to which the Act applies within such limits as may, from time to time, be defined by the Central Government for the purposes of the Act by notification in the Official Gazette, and until such notification is issued, within such limits as may have been defined by the Central Government under the provisions of the 1908 Act. "Trustee" in relation to a "Port" means "a member of the Board constituted for the Port". We then move to Chapter II

entitled "Board of Trustees and Committees thereof. Sec. 3 deals with the constitution of the "Board of Trustees" and says that with effect from such date, as may be specified by notification in the Official Gazette, the Central Government shall cause to be constituted in respect of any Major Port the Board of Trustees to be called the "Board of Trustees" of that Port consisting of a Chairman, and if thought fit, a Deputy Chairman, both to be appointed by the Central Government, not more than 10 persons to be appointed by the Central Government and not more than 12 persons to be elected by such State or local bodies representing commercial, shipping or local interests as the Central Government may specify. Sec. 5 provides that every Board constituted under the Act shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold or dispose of property, and may by the name by which it is constituted sue or be sued. Sec. 7 lays down that the Chairman and the Deputy Chairman shall hold office during the pleasure of the Central Government. Their conditions of service are also to be determined by the Central Government under sec. 15 of the Act. Sec. 8 empowers the Central Government to remove a Trustee for any one or more of the five reasons set out in clauses (a) to (e) of sub-sec. (1) thereof. We next come to Chapter III entitled "Staff of the Board". Clauses (a) and (b) of sec. 24, which are material for our purpose, provide that the power of appointing any person to any post whether temporary or permanent, shall (a) in the case of a post the incumbent of which is to be regarded as Head of the Department, be exercisable by the Central Government after consultation with the Chairman and (b) in the case of a post other than the post referred to in clause (a), the maximum of the pay scale for which (excluding all allowances) except such amount, as the Central Government may, from time to time, fix in this behalf and where no such amount has been fixed, is not less than Rs. 1 000/-, be exercisable by the Board. Sec. 26 empowers the Board to appoint any person as a Consulting Engineer to the Board otherwise than on the basis of payment of monthly salary but every such appointment is made subject to the sanction of the Central Government. Sec. 27 further provides that notwithstanding anything contained in sec. 23, no post other than a post referred to in clause (c) of sec. 24(1) shall be created except with the sanction of the Central Government. The scheme of these provisions clearly shows that the Central Government has retained control in the matter of appointment of officers to be regarded as Heads of Department, Consulting Engineers and other high ranking officers of the Board. Chapter IV entitled "Property and Contracts" contains the controversial clause, which may be reproduced at this stage:

"2. Transfer of Assets and Liabilities of Central Government, etc. to Board :

(1) As from the appointed day in relation to any port :

(a) all property, assets and funds vested in the Central Government, or as the case may be, any other authority for the purposes of the port immediately before such date, shall vest in the Board".

It is not necessary to reproduce the other clauses of this section. Sec. 32 next provides that whenever any immovable property which is required for the purpose of the Board, cannot be acquired by agreement, the Central Government may, at the request of the Board, procure the acquisition thereof under the provisions of the Land Acquisition Act, 1894 and on payment by the Board of the compensation awarded under that Act and all the charges incurred by the Government in connection with the proceedings, the land shall vest in the Board. Sec. 33 empowers the Board, subject to the provisions of sec. 34, to enter into and perform any contract necessary for the performance of its functions under the Act. Sec. 34 provides that every contract shall, on behalf of the Board, be made by the Chairman and shall be sealed by the common seal of the Board provided that no contract whereof the value or amount exceeds such value or amount as the Central Government may, from time to time, fix, in this behalf, shall be made unless it has been previously approved by the Board; provided further that no such contract for the acquisition or sale of immovable property or for the lease of any such property for a term exceeding 30 years and no other contract whereof the value or the amount exceeds such value or amount as the Central Government may, from time to time, fix in this behalf, shall be made unless it has been previously approved by the Central Government. This group of sections establishes that the Chairman of the Board is given authority to execute contracts where the value does not exceed the maximum fixed by the Central Government. If the amount exceeds the amount so fixed, the previous approval of the Board is necessary. If the proposal is to acquire any land or building, the approval of the Central Government is necessary. Chapter V is entitled "Works and Services to be provided at Ports". Secs. 37 and 38 empower the Board to order sea going vessels to use docks, wharves, etc. Sec. 40 which is an overriding provision, empowers the Central Government to permit certain specified vessels or classes of vessels to discharge or ship goods or certain specified goods or

classes of goods at such place in a port or within the port approaches, in such manner, during such period and subject to such payments to the Board and on such conditions, as the Central Government may fix. We now pass on to Chapter VI entitled "Imposition and Recovery of Rates at Ports". Secs. 48 and 49 enjoin upon the Board to frame a scale of rates at which services shall be rendered at the port or port approaches. Sec. 52 provides that every scale of rates and every settlement of conditions framed by a Board shall be submitted to the Central Government for sanction and shall have effect when so sanctioned. Sec. 54 empowers the Central Government to require modifications or cancellation of such rates. If any Board fails or neglects to comply with such directions, within the specified period, the Central Government is empowered to cancel any such scales or make such modifications therein as it may think fit. Sec. 57 bars the Board from releasing rates without the prior sanction of the Central Government. Sec. 64 lays down that if the master of any vessel in respect of which any rates or penalties are payable under the Act or under regulations or orders made in pursuance thereof, refuses or neglects to pay the same or any part thereof on demand, the Board may distrain or arrest such vessel and detain the same till the amount so due to the Board together with such further amount, as may accrue for any period during which the vessel is under distress or arrest is paid. It is further provided that in case any part of the said rates or penalties, or of the cost of distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest has been so made, the Board may cause the vessel or other things so distrained or arrested to be sold. The provisions of this Chapter show that while the Board is enjoined with the duty to frame scale of rates, etc., the Central Government has plenary powers to cancel or modify such rates and to issue directions in that behalf. It also shows that the power of arrest and distress of the vessel and its sale which are ordinarily exercised by the State have been transferred to the Board to enable it to recover its dues so that the day to day administration is not paralysed. Chapter VII is entitled "Borrowing powers of the Board." Sec. 66 entitles the Board with the previous sanction of the Central Government to raise loans for the purposes of the Act. Sec. 67 further authorises the Board to issue port securities with the sanction of the Central Government. Sec. 81 provides for the establishment of a sinking fund. Sec. 82 deals with the investment and application of a sinking fund and sec. 83 requires that the sinking fund shall

be subject to annual examination by such person as may be appointed by the Central Government in this behalf, Sec. 86 gives power to the Board to raise for the purposes of the Act loans from the International Banks or from any other bank or institution in any other country outside India with the previous sanction of the Central Government. This group of sections indicates the extent of financial control of the Central Government. Chapter VIII deals with the "Revenue and Expenditure" of the Board. Sec. 92 lays down that no expenditure shall be charged by the Board to capital without the previous sanction of the Central Government. Sec. 93 says that no new work or appliance, the estimated cost of which exceeds such amount as may be fixed by the Central Government in this behalf, shall be commenced or provided by a Board until a plan of an estimate for such work or appliance has been submitted to and approved by the Board and in case the estimated cost of any such new work or appliance exceeds such amount as may, from time to time, be fixed by the Central Government in this behalf, the sanction of the Central Government to the plan and estimate shall be obtained before such work is commenced or appliance provided. Sec. 94 empowers the Chairman, notwithstanding anything contained in sec. 93, to direct the execution of any work, the cost of which does not exceed such maximum limit as may be fixed by the Central Government in this behalf. Sec. 95 gives the Board power to compound and compromise claims but provides that no settlement shall be made without the previous sanction of the Central Government if it involves the payment of a sum exceeding such amount as may be specified by the Central Government in this behalf. Sec. 98 enjoins upon the Board to submit an estimate of the Income and Expenditure of the Board for the next financial year in such form as the Central Government may specify. The Central Government can sanction the estimate or may return it with remarks and may call for any additional information as it may deem necessary. When an estimate is returned, the Board must reconsider the estimate with reference to the remarks and must furnish such additional information as the Central Government may call for and, shall, if necessary, modify or alter the estimate and resubmit it to the Central Government for sanction. Sec. 102 further enjoins upon the Board to maintain proper accounts and other relevant records and prepare the Annual Statement of accounts in consultation with the Comptroller and Auditor General of India. The account of the Board must be got audited once in every year by the

Comptroller and Auditor General of India or such other person as may be appointed by him in this behalf. If there is any difference of opinion between the Board and the Comptroller or Auditor General of India on any point included in the audit report, sec. 105 provides for a reference to the Central Government and the orders passed by the Central Government are made binding on the Board. All these; provisions in Chapter VIII of the Act also disclose the tight grip maintained by the Central Government on the finances of the Board. That brings us to Chapter IX which deals with the "Supervision and Control of Central Government". Sec. 106 provides that as soon as may be after the first day of April every year, every Board shall submit to the Central Government, a detailed report of the administration of this Port during the preceding year. Sec. 107 enjoins upon every Board to submit statements of its Income and Expenditure at such time; as the Central Government may direct. Sec. 108 gives power to the Central Government to order a local survey or examination of any works of the Board at any time. The Central Government can cause any work or appliance which has fallen into disrepair or is not completed within a reasonable time to be restored or completed under sec. 109 of the Act. Sec. 110 entitles the Central Government at any time to supersede the Board for a period not exceeding six months at a time. Upon the Board being superseded "all property vested in the Board shall, until the Board is reconstituted.....vest in the Central Government". Lastly sec. 111 empowers the Central Government to issue directions to the Board which the latter is bound to obey. Chapter X sets out the penalties and it would be sufficient to refer to sec. 117 which provides that any person who contravenes any of the provisions of this Act or of any rule, regulation or order made thereunder, for the contravention of which no penalty is expressly provided thereunder, shall be punishable with fine which may extend to rupees two hundred. The miscellaneous provisions are found in Chapter XI and sec. 122 thereof empowers the Central Government to make Rules while sec. 123 empowers the Board to make Regulations consistent with the Act for any of the matters catalogued in clauses (a) to (o) of that section. The breach of a Regulation is made penal by sec. 117 and this shows that the; power to make penal provisions is also indirectly transferred to the Board. Sec. 130 which begins with a non-ob-stante clause empowers the Board to cancel the allotment of any premises made to any employee of the Board and to order such allottee or any other person who may be in occupation of the whole or any part of the premises, to surrender

or deliver possession thereof to the Board or a person appointed by the Board in that behalf. These are the relevant provisions of the 1963 Act which unfold its scheme.

**[20]** We now move into the midst of the controversy. The preamble of the 1963 Act makes it clear that the Act was enacted to provide for the constitution of port authorities for certain major ports and to "vest the administration, control and management of such ports in such authorities". The language of the preamble provides the key to the statute and it is useless to contend that in the interpretation of any law the Court should not place reliance on the language of the preamble. It is undoubtedly true that the Board incorporated under sec. 3 is a body corporate having perpetual succession and a common seal by virtue of sec. 5 and can sue or be sued by the name by which it is incorporated. When a corporation is incorporated by an Act of Parliament, the statute constituting it becomes its charter declaring its rights and powers and prescribing its duties and obligations. Therefore, statutory corporate bodies have such rights and can do such acts only as are authorised directly or indirectly by the law creating them. The powers of a statutory corporation like the present one are limited and circumscribed by the statute to which it owes its existence and extend no further than what is provided therein or is necessarily or properly required for carrying into effect the purposes of its incorporation or may be fairly regarded as incidental to those things authorised by Parliament. In other words that which is not either expressly or impliedly authorised must be deemed to have been denied or prohibited. The preamble of the Act leaves no doubt in our minds that the Board has been created for the limited purpose of vesting therein the administration, control and management of the port and this purpose is clearly discernible from the scheme of the statute. We have noticed that the Central Government has the power to appoint the Chairman, Deputy Chairman and about 10 members out of the maximum of 22 members on the Board. Even in the matter of appointment of officers to be regarded as heads of department and certain other high ranking officers the power of appointment is retained by the Central Government. In fiscal matters also a tight grip is maintained by the Central Government. Certain monetary limits are prescribed thereby circumscribing the authority of the Board and its Chairman in the matter of execution of contracts, etc. Not only that, we find several fetters imposed on the Board even in administrative matters. The scheme of the 1963 Act is in conformity with its preamble and, therefore, even if we were to ignore the preamble we would have no Hesitation in holding that vesting in the Board is for the purpose of administration, control and management. We have also noticed that certain

State powers and functions of distress, arrest, sale, etc., have been transferred to the Board and the Board has been invested with the power to make regulations, breach whereof is made penal. It is also armed with power to summarily evict allottees and certain other persons from Board premises without resort to the ordinary process of law. It becomes clear from these powers and functions entrusted to the Board that the statute expects the Board to act as the agent of the Central Government, which would, but for this statutory delegation, be expected to exercise such powers and perform such duties.

**[21]** Now clause (a) of sub-sec. (1) of sec. 29 of the 1963 Act, reproduced earlier, provides that all property, assets and funds vested in the Central Government or any other authority for the purposes of the Act shall vest in the Board. The question is whether the vesting is absolute, in the sense of vesting in title, or limited, in the sense of vesting in possession only. In other words did the Central Government intend to divest itself of ownership in the property, assets and funds while vesting the same in the Board? The expression "vest" does not have a definite or fixed connotation and is used in a variety of shades. To determine its exact import we must look to the context in which it is used. It is not permissible to read the language of the section in isolation but regard must be had to the scheme of the statute, its object and purpose and the contextual structure before a clear meaning is given to the expression falling for interpretation. If so read we have no doubt that the vesting in the Board is not absolute but only for administration, control and management.

**[22]** Three cases were cited before us on the question of vesting. In the *Fruit & Vegetable Merchants Union v. The Delhi Improvement Trust*, A.I.R. 1957 S.C. 344, under an agreement certain area of Nazul land of the Government was placed at the disposal of the Trust for 'orderly expansion of Delhi under supervision of a single authority'. Additional land was subsequently sanctioned on two conditions; (i) the whole of the land is the property of Government; and (ii) the trust will administer the new market on completion. The Trust was empowered to sell any land included in Nazul Estate on its own authority for full market value but if the amount exceeded Rs 25,000/- sanction of the Chief Commissioner or Government was necessary. The Trust was enjoined to maintain separate accounts of income and expenditure. The surplus funds were to be placed at Government's disposal for application to improvement of Nazul Estate. On the question in whom the title to the market vest, the Supreme Court observed as under on page 352 :



".....the word "vest" is a word, at least, of ambiguous import. Prima facie 'vesting' in possession is the more natural meaning. The expressions "investiture"-'

"clothing"and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage 'vesting' ordinarily means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."

Again in paragraph 20 on page 353 the following pertinent observations are made :

"We have already held that the Trust was in the position of a statutory agent of Government and had erected the structure with money belonging to Government but advanced at interest to the Trust. In such a situation the structure also would be the property of Government, though for the time being it may be at the disposal of the Trust for the purpose of managing it efficiently as a statutory body. Simply because the Trust erected the structure in question and later on paid up the amount advanced by Government for the purpose would not necessarily lead to the legal inference that the structure was the property of the Trust."

**[23]** In *A. P. State Road Transport Corporation v. Income tax Officer*, A.I.R. 1964 S.C. 1486 the question which arose for consideration was whether the income of the Corporation was exempt from Union taxation under Art. 289 of the Constitution. It was found from the relevant provisions of the Act that the bulk of the capital was contributed by the State Government and a small proportion came from the Central Government. Thus the majority of the shares were held by the State. Undoubtedly the Corporation was created by the statute and was controlled by the State. But it was found that private individuals could be admitted as shareholders and this single factor weighed with the court in holding that the Corporation had a personality of its own distinct from the State

and it was not possible to hold on the frame of the statute that the trading activity was being carried on by the State departmentally through the statutory ' corporation. This case, therefore, turns on its peculiar facts and is of little assistance to us.

**[24]** The third case to which our attention was drawn is the decision in *Maharaj Singh v. State of Uttar Pradesh and Others*, (1977) 1 S.C.C. 155. The matter arose out of a suit filed by two plaintiffs (i) the State of U.P. and (ii) the Gaon Sabha of Bedpura for alternative reliefs of injunction or ejection. The defendant was a quondam zamindar of the estate in the suit. The State of U.P. by an Act extinguished all zamindari estates which led to the cesser of ownership of the zamindar and vesting of title and possession in the State. By a notification issued under sec. 117(1) of the Act the area of lands was vested in the Gaon Sabha. The defendant resisted ejection on the strength of sec. 9 of the Act. The suit was dismissed by the trial court, whereupon Gaon Sabha dropped out and only the State appealed. The High Court partially allowed the appeal and modified the decree. The defendant carried the matter to the Supreme Court. Sec. 117(1) provided that certain properties "which had vested in the State under this Act shall vest in the Gaon Sabha". Interpreting this provision, Krishna Iyer, J., who spoke for the court, made the following observations in para 16 :

"It is reasonable to harmonize the statutory provisions to reach a solution which will be least incongruous with legal rights we are cognisant of in current jurisprudence. Novelty is not a favoured child of the law. So it is light to fix the estate created by sec. 117 into familiar moulds, if any. Such an approach lends to the position that the vesting in the State was absolute but the vesting in the sabha was limited to possession and management subject to divestiture by Government. Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions. So the sense of the situation suggests that in sec. 117(1) of the Act 'vested in the State' carries a plenary connotation, while 'shall vest in the Gaon Sabha' imports a qualified disposition confined to the right to full possession and enjoyment so long as it lasts. Lexicographic support is forthcoming, for this meaning. Black's Law Dictionary gives as the sense of 'to vest' as to give an immediate fixed right of present or future enjoyment, to clothe with possession, to deliver full

possession of land or of an estate, to give seisin'. Webster's Third International Dictionary gives the meaning as 'to give to a person a legally fixed immediate right of present or future enjoyment'."

**[25]** We may lastly refer to *Sukhdev Singh and Others v. Bhagatram Sardar Singh and Another*, A.I.R. 1975 S.C. 1331, which was a case in which the structures of the statutes creating the three corporations, namely, (1) The Oil and Natural Gas Commission; (2) The Life Insurance Corporation; and (3) The Industrial Finance Corporation were examined by the Supreme Court with a view to determining whether regulations framed under these statutes had the force of law: Chief Justice Ray, speaking for the imparity, made the following observations in respect of the aforesaid three statutory corporations :

'44. All these provisions indicate at each stage that the creation, composition of membership, the functions and powers, the financial powers, the audit of accounts, the returns, the capital the borrowing powers, the dissolution of the Commission and acquisition of land for the purpose of the company and the powers of entry are all authority and agency of the Central Government.

50. The structure of the Life Insurance Corporation indicates that the Corporation is an agency of the Government carrying on the exclusive business of life insurance. Each and every provision shows in no uncertain terms that the voice is that of the Central Government and the hands are also of the Central Government. 62. The Industrial Finance Corporation is under the complete control and management of the Central Government. Citizens cannot be shareholders. Certain specified institutions like Scheduled Banks, Insurance Companies, Investment Trusts and Co-operative Banks may apply for the shares. The Central Government may acquire shares held by shareholders other than the Development Bank. After such acquisition, the Government may direct that the entire undertaking of the Corporation shall be vested in the Development Bank. The Corporation cannot be dissolved except by the Government."

Mathew J. in a separate but concurring judgment made the following observations in para 109 on page 1356 :

"These corporations are instrumentalities or agencies of the State for carrying on business which otherwise would have been run by the State departmentally."

**[26]** The aforesaid case law therefore supports our view that the term "vest" has more than one meaning and to find its exact connotation, we must look to the Scheme of the law and the context in which it is used. The setting in which it is used would lend colour to it and divulge the legislative intent. Viewed from this point of view we are satisfied that the vesting of property in the Board is for the limited purpose of administration, control and management only without the Central Government having divested itself of ownership. But it was said that if the Central Government was the owner where was the need to make provision for vesting of property in Central Government in the event of supersession of the Board. The answer is not far to seek. What was vested in the Board by sec. 29 (1)(a) had to be taken care of and on the supersession of the Board provision had to be made to vest the property in the Central Government. It was next argued that under the statute the Board can acquire property by agreement or through the coercive process under the Land Acquisition Act on the Board paying the compensation and cost of acquisition. It was also said that separate budget estimates are contemplated which point to the Board being a separate entity distinct from the Central Government. The power to acquire property and the requirement of preparing annual budget estimates are consistent with the concept of statutory agency and hence we see no substance in the contention.

**[27]** It was next pointed out that the absence of the power of resumption is indicative of the fact that the vesting is absolute. In this connection our attention was invited to sec. 76(4) of the Bombay Provincial Municipal Corporations Act, sec. 80(3) of the Gujarat Municipalities Act and sec. 96(4) of the Panchayats Act which carry the power of resumption. The short answer to this contention is that if the Central Government is minded to resume any area it has merely to alter the limits under sec. 5 of the 1908 Act, in which case the Board will automatically be divested of control over such property and the Central Government in whom the paramount title vests would assume control. Hence there was no need to make a separate provision for resumption as the paramount title was never intended to be transferred under the 1963 Act. In our view the absence of such provision is indicative of limited vesting in the Board and not vice-versa as contended on behalf of the State and the Municipality.

27. We now reach the last limb of the submission It was argued by the learned counsel for the State and the Municipality that cl (a) of sub-sec. (l) of sec. 29 of the 1963 Act deals with the transfer of assets and liabilities of not only the Central Government but also "any other authority" and if we take the view that the vesting contemplated by the said clause is limited to vesting in possession in the case of assets belong to the Central Government, we would be obliged to assign the same meaning to the term "vest" in the case of assets of "other authorities" also and that would lead to an anomalous situation not envisaged by the law makers. In this connection our attention was drawn to the three sister statutes, namely, (1) The Bombay Port Trust Act, 1879, (2) The Calcutta Port Trust Act, 1899 and (3) Madras Port Trust Act, 1905 in support of the contention that under these three statutes the vesting in favour of the port authorities was complete and if the narrow meaning that we are inclined to assign to the term "vest" applies in respect of the assets of both the Central Government and the statutory authorities, an anomalous situation will arise, in that, while the properties held by these authorities will vest in possession in the Board by virtue of the application of the 1963 Act to these ports by the Major Port Trusts (Amendment) Act, 1974, the title in the properties shall continue to vest in the said authorities; the repeal of the said Acts by the Amending Statute, notwithstanding. To answer these submissions we must briefly examine the scheme of the three sister statutes to understand the nature of "vesting" in the statutory authorities created by those Statutes.

**[28]** The preamble of the Bombay Port Trust Act, 1879 makes it clear that it is an Act to consolidate the immovable and other property vesting in the trustees of the Port of Bombay, and certain other property on, or connected with, the foreshore of the island of Bombay into one estate, .and to vest the control and management of the same in one public Trust; and for other purposes. Sec. 4 provides that the duty of carrying out the provisions of the Act shall, subject to such conditions and limits, as are hereinafter contained, be in a Board which shall be a body corporate having a perpetual succession and a common seal. Sec. 5 deals with the constitution of the Board and says that the Board shall consist of 25 members consisting of a Chairman, 10 nominee-trustees and 14 elected-trustees. The Chairman and the nominee-trustees are to be appointed by the Central Government. Of the 14 elected-trustees, two are to be elected by the Municipal Corporation and the remaining by such State or local bodies representing commercial

interests as the Central Government may specify by a notification. We may immediately proceed to sec. 26, which invests the Board with the power to acquire and hold movable and immovable property for the purpose of the Act. It also empowers the Board to lease, sell or otherwise convey any such property which may have become vested in or acquired by them provided that no sale of immovable property and no leases of any such property for a term exceeding 31 years shall be valid unless the previous sanction of the Central Government in that behalf is obtained. Sec. 27 provides that when the Board is unable to acquire, by agreement, any immovable property required for the purpose of the Act, the Central Government may acquire the property as if it were needed for a public purpose under the Land Acquisition Act, 1870. Of course, the amount of compensation and all other charges incurred in the acquisition of such property had to be defrayed by the Board and thereupon the property was to vest in the Board. We then come to the next two important sections which deal with the transfer to Board of property of the existing Port Trust and vesting in the Board the right, title and interest acquired by the Secretary of State in other properties. Sec. 28 says that all such immovable and other property, as is held by or in trust for the trustees of the Port of Bombay under and in pursuance of or for the purpose of the Bombay Port Trust Act, 1873 shall, upon and after the date notified by the Government under sec. 8, vest in the Board subject to all charges and liabilities affecting the same. It is farther provided that the property vested, by this section in the Board shall be deemed to include the estate, right, title and interest of the Government in rock, stone, shingle gravel, sand or soil within the port and also the right of levying rates on all goods landed at or shipped from any part of the foreshore between Malabar point and Kolaba point. Sec. 29 lays down that on the completion of the acquisition proceedings in respect of properties described in Schedule A, all the estate, right, title and interest of the Secretary of State for India in Council, in the said property shall subject to the provisions hereinafter contained become vested in the Board. We next move on to sec. 36, from which considerable support was sought by the learned counsel for the State and the Municipality. This section provides that the Board shall pay annually to the Municipal Corporation in lieu of the general tax leviable by the said Corporation in respect of the property or some portion of property, vested in the Board, which would otherwise be liable to be assessed to the said tax, a sum ascertained in the manner provided in sub-Secs. (2) and (3). Sub-sec. (2) lays down that the rateable value of the lands and buildings vesting in the Board of which the said tax would be leviable, shall be fixed from time to time by the Central Government, having regard to the provisions in the City of Bombay Municipal Act, 1888, concerning the valuation of property assessable to property taxes. Sub-sec. (3) says that the sum to be paid annually to the Corporation by the Board shall be nineteen-

twentieths of the amount which would be payable by an ordinary owner of building or lands in the city, on account of the general tax on a rateable value of the same amount as that fixed under sub-sec. (2) sec. 37 casts a duty on the Municipality in consideration of said payment to maintain roads and thoroughfares constructed by the Board. Sec. 39 empowers the Board to raise money for the general purposes of the Act with the previous sanction of the Central Government unless the amount is borrowed from the Central Government or the State. The next relevant provision which we may notice is sec. 73, which empowers the trustees to make byelaws with the approval of the Central Government. Sec. 75 prescribes penalties for the infringement of the bye-laws made under sec. 73. Sec. 88 empowers the Board to evict certain persons from the premises of the Board, notwithstanding anything contained in any other law. Sec. 90 deals with the supersession of the Board by the Central Government. The consequence of such supersession, amongst others, is that the property vested in the Board, shall, until the Board is re-constituted, vest in the Central Government.

**[29]** Our attention was also invited to the previous legislations on the subject in support of the contention that the vesting in the Board of Trustees under the Bombay Port Trust Act, 1879 was complete both in possession and in interest. Act XXII of 1855 made provision for the safety of vessels and for the convenience of traffic in several ports within the territories in possession and under the Government of the East India Company and for the improvement, maintenance and good government of such ports, as also to regulate levy of port dues, etc., and to punish defaulters. Sec. III empowered the local Government with the sanction of the Governor General in Council to declare any port within that part of the said territories to be subject to the provisions of the Act. Sec. VI dealt with the appointment of a Conservator of every port, who was empowered by sec. X to give directions for carrying into effect any port rule in force within such port. Sec. XI prescribed penalties for disobedience to orders of Conservator. It will thus appear that the Conservator was merely an officer of the Government, who was charged with the duty to carry out the purposes of the Act.

**[30]** Act XXXI of 1857 was enacted for the levy of port dues and fees for the Port of Bombay and was intended to complement Act XXII of 1855 as is clear from sec. VII of the said Act. This was followed by Bombay Act No. V of 1870, which also made provision for the levy of fees for the use of Government bunders, wharves, landing places, piers and herds in the City of Bombay and for the appointment of an officer to perform duties in connection therewith. This Act also does not offer any cue on the question of vesting of properties in the port authorities.

**[31]** We next proceed to consider the Bombay Port Trust Act, 1873, which repeals the earlier Statutes in so far as they are inconsistent with the provisions made therein. Sec. III empowers the local Government to nominate and appoint not less than nine, nor more than ten persons of whom not less than 1/3rd nor more than 1/2 shall be persons holding salaried offices under the Government to be trustees of Port of Bombay and to nominate a Chairman of such trustees. Sec. VIII, which is relevant, provides that immediately on the passing of this Act, the lands and property hereinafter mentioned, shall vest in the trustees for the purposes of the Act. Sec. IX lays down that the administration of the powers and trusts created and declared by this Act shall, subject to the powers and authorities conferred on the local Government, be vested in the trustees, and inasmuch as certain parts of lands and property vested in the trustees under the preceding section have heretofore been liable to be rated and taxed for the purposes of the Municipality of Bombay, there shall for the term of ten years from and after the taking effect of this Act be payable to the said Municipality of Bombay out of the revenues of the Trustees of the Port of Bombay the annual sum of Rupees 50,000 in lieu of all Municipal rates and taxes except rates and taxes for the supply of water and halalcore service, and in consideration of such annual payment when and as soon as any roads and thoroughfares have been duly levelled, paved, metalled, flagged, channelled and sewered by the Trustees, the Municipal Commissioner shall, on being satisfied of the same, declare such road or thoroughfare to be a public thoroughfare, and thereupon it shall maintain and keep in repair and light and cleanse all such roads and thoroughfares. Sec. XX invests the local Government with the power to remove the Chairman or any trustee by an order to be made in that behalf. Sec. XXXI lays down that the trustee shall, for the purposes of this Act, have power to acquire and hold immovable and movable property. The trustees were also invested with power to lease or sell any movable or immovable property vested in or acquired by them, which is no longer required for the purposes of the Act; provided that no such sale or other alienation or lease shall be valid unless the sanction of the local Government is first obtained. Provision is also made in sec. XXXII for compulsory acquisition of property if the same is required for the purposes of the Act, if the trustees are unable to acquire such property by agreement. Sec. XXXIII enjoins upon the trustees to provide from the land in their possession any land which the Government shall declare to be required for a public purpose. Sec. LXXXV empowers the trustees to make bye-laws and sec. LXXXVIII prescribes the penalty for the infringement of a bye-law. Sec. XCIV empowers the Government to take possession and revoke the powers of the trustees. It provides that if an order in that behalf is made, all Immovable and movable property, all benefit of



contracts and all rights of suits which at the time of the publication of such order may be vested in the trustees, shall be transferred and vested in the Secretary of State for India in Council without the necessity of any conveyance. It becomes clear from the scheme of the aforesaid Statutes concerning the Port of Bombay that the Board of Trustees was constituted for the purpose of the efficient management and administration of the Port. The structures of the said Statutes clearly indicate that the corporate body thereunder constituted was merely an agency of the Government carrying out the purposes of the Act and the scheme of the Statutes, shows in no uncertain terms, that, to use the words of Chief Justice Ray, "the voice is that of the Government and the hands are also of the Government."

**[32]** At this stage we may dispose of the argument, which was canvassed before us on the basis of sec. 36 of the Bombay Port Trust Act, 1879, which required the Board to pay annually to the Corporation, in lieu of general taxes leviable by the Corporation in respect of property vested in the Board, which would otherwise be liable to be assessed to the said tax, a sum ascertained in the manner provided by sub-Secs. (2) and (3). We have noticed that sec. IX of the Bombay Port Trust Act, 1873 provided for lump sum payment of Rupees 50,000 to the Municipality by the trustees in lieu of all municipal rates and taxes. We also noticed that in consideration of such annual payment, the Municipality undertook to maintain and keep in repair and light and cleanse all roads and thoroughfares declared as public thoroughfares and also to maintain and keep in repair and light and cleanse the roadway of any wharf, dock or pier vested in the trustees under the Act as if the said roads, thoroughfares and places were vested in the Municipality. Sec. 66 of the Bombay Municipal Act, 1872 provided for the levy of rates, taxes, tolls and duties but sec. 77 granted exemption in respect of lands and buildings owned by a Government or the Corporation from the payment of house rate. The Port of Bombay till the enactment of the Bombay Port Trust Act, 1873 was undoubtedly the property of the Government, and, was, therefore, exempt from house rate. Bombay Municipal Act, 1872 was repealed by the City of Bombay Municipal Act, 1888. Sec. 140 of the said Act empowered the levy of property tax consisting of water tax, ha'alkhar tax and general tax. Clause (b) of sec. 143(1) made provision for the levy of general tax on all buildings and lands except buildings and lands vested in Her Majesty (used solely for public purposes and not used or intended to be used for purposes of profit) or in the Corporation, in respect of which the said tax, if levied, would under the provisions therein contained, be primarily leviable from the Crown or the Corporation respectively. The existing sec. 36 of the Bombay Port Trust Act, 1879 was substituted by sec. 145 of the City of Bombay Municipal Act, 1888. It will thus become clear from the aforesaid

legislative history that provision was made for lump sum payment of taxes to the Municipality in consideration of the Municipality having undertaken to maintain, keep in good repair, cleanse and light the roads and thoroughfares, declared public, as also the roadway of any wharf, dock or pier vested in the trustees. It is for these services rendered by the Municipality that provision was made for lump sum payment of tax to the Municipality in lieu of general tax. If for service rendered a special provision is made for the payment of lump sum tax to the municipality it cannot be validly contended that the said circumstance provides a sure indication that the property no longer belonged to the Government.

**[33]** The provisions in the other two sister Statutes are almost identical. Sec. 4 of the Calcutta Port Act, 1890 makes provision for the appointment of a body of Commissioners to perform the duties of carrying out the provisions of the Act. Sec. 5 provides for the constitution of Commissioners. Sec. 55 provides that the Commissioners shall, for the purposes of the Act, have power to acquire and hold immovable or movable property by conveyance, gift, lease, assignment or sale from the Government or any corporate body or any registered Joint Stock Company or private person; and they shall also have power to sell or lease any immovable or movable property which may have become vested in or been acquired by them; provided that no such sale, or other alienation or lease of any immovable property for any estate or interest exceeding the term of thirty years, shall be valid unless the sanction of the Central Government to such sale, alienation or lease shall have been first obtained. Sec. 57 lays down that all property vested in, or acquired or held by, and all moneys paid or payable to, the Commissioners, shall be held by the Commissioners in trust for the purposes of the Act. Sec. 58 provides for acquisition of land or building for the purpose of the Act through the instrumentality of the Central Government and further provides that on payment of compensation by the Commissioner, such land or building shall vest in them for the purposes of the Act. Sec. 59 prescribes the procedure for ascertainment of annual value of the property vested in the Commissioners within the municipal limits for the purposes of payment of tax. Sec. 67 empowers the Calcutta Corporation to declare any road or thoroughfare vested in the Commissioners a public street. Sec. 68 casts a duty on the Calcutta Corporation to light, cleanse or water such roads or thoroughfares open to the public or leading to any dock, wharf or jetty. Sec. 126 entitles the Commissioners to make, alter or repeal bye-laws and sec. 127 prescribes the penalty for the infringement of any bye-law. Secs. 109 to 132 provide for the constitution and control of Port Police Force and sec. 136A arms the Commissioners with the power of summary eviction of allottees occupying premises vested in the

Commissioners.

**[34]** The Madras Port Trust Act, 1905, which is also a consolidating Act relating to the regulation, conservancy and improvement of the Port of Madras, runs along the same lines. Sec. 6 imposes a duty on the Board to carry out the provisions of the Act, subject to such conditions and limitations contained therein. Sec. 7 deals with the constitution of the Board and sec. 8 provides for the appointment of trustees. Sec. 11A lays down that an elected trustee or a trustee appointed by the Central Government may resign his office by giving notice in writing to the Chairman, who shall forward the same to the Central Government, and on such resignation being accepted by the Government, he shall cease to be a trustee. Sec. 31 says that on the coming into force of the Act, the several immovable properties specified in Schedule II and all movable property held by or in trust for the Board of Trustees of the Harbour of Madras, shall vest in the Board. Sec. 32 empowers the Board to acquire, hold or alienate property for the purposes of the Act but the proviso stipulates that no such sale or lease for a term exceeding 30 years of any immovable property shall be valid unless the consent of the Central Government thereto is first obtained. Sec. 33 makes similar provision for acquisition of immovable property through the instrumentality of the Central Government under the Land Acquisition Act, 1894 for the purposes of the Act. Sec. 63 entitles the Board to raise loans for the purposes of the Act with the previous sanction of the Central Government. Sec. 95 gives power to the Board to make bye-laws and sec. 97 empowers the Board to prescribe such penalties as it shall deem fit for the infringement of any bye-law. Sec. 113 makes an identical provision in the matter of supersession of the Board and the vesting of the property in the Central Government until the Board is reconstituted.

**[35]** The schemes of the three Acts clearly indicate that the Board of Trustees/Commissioners constituted under the respective Acts are charged with the duty of carrying out the provisions of the Acts to which they owe their existence. In the constitution of the Board of Trustees/Commissioners the Central Government has a dominant voice and even the resignation of a trustee can only be accepted by the Central Government. The power to borrow money is also dependant on the previous approval or sanction of the Central Government. It is thus obvious that the vesting of the property in the Trustees/Commissioners is for carrying out the duties imposed by the respective Statutes. The properties vest in the Trustees/Commissioners to achieve this objective and for that purpose certain governmental functions have also been delegated to the Trustees/ Commissioners. All these three Statutes empower the Trustees/

Commissioners to frame bye-laws and breach of the bye-laws so framed is made penal under the Statutes. The Statutes also empower the Trustees/Commissioners to order summary eviction of allottees occupying premises vesting in them.

It is thus clear that the broad scheme of the three sister Statutes is akin to the scheme of the 1963 Act, which we have considered in extenso in the earlier part of this judgment. The scheme of these three Statutes therefore, does not militate against our view that the Parliament by incorporating corporate bodies under the Statutes created an agency for carrying out the purposes of the respective Acts and for that limited purpose the properties came to be vested in the said agencies. In fact, the preamble of the Bombay Act in terms states that the vesting is for the purpose of control and management of the properties in one public trust. Provisions in the other two Acts also make it clear that the properties shall be held by the Trustees/Commissioners in trust for the purposes of the respective Acts. The Trustees/Commissioners are charged with the duty to carry out the provisions of the respective Acts. The maintenance of ports is primarily the function of the Government. For the efficient performance of that function the legislature created corporate bodies under different statutes and charged them with the duty to carry out the provisions of the respective Acts. The properties were, therefore, required to be vested in the corporate bodies created under the statutes and this vesting can only be for the purpose of administration,, control and management only. Power to acquire, hold and dispose of properties, subject to the directions of the Government, is as a matter of convenience only but that cannot be understood to mean that the Government divested itself of title over such properties. Suppose in exercise of power under ,sec. 5 of the 1908 Act the limits of a major port are altered so as to carve out a certain area. Immediately on the Government issuing a notification in that behalf the Board will cease to have control over lands and properties in such area. In that case in whom will the legal title in respect of such estate vest ? If the vesting in the Board is absolute we will be faced with an absurd situation and may be compelled to resort to Art. 296 of the Constitution on the principle of bona vacantia. To attribute such an intention to the law makers would be an affront to the wisdom of our Parliament. We are, therefore, of the opinion that if we take the view that vesting by clause (a) of sub-sec. (1) of sec. 29 of the 1963 Act is limited to vesting in possession, no anomaly is likely to be created even under the scheme of the

three sister Statutes, which we have considered earlier.

**[36]** It was faintly argued that the power to collect non-agricultural assessment derived from the provisions of the Bombay Land Revenue Code, 1879, can be exercised only if land belonging to the Government is in occupation of a third party and non-agricultural assessment can be levied if such person uses the land for a purpose other than agricultural purpose. It was submitted that in the instant case since the lands in question vested in the Central Government prior to the coming into force of the 1963 Act, the State Government was never the owner of the said lands and, hence, there could be no question of charging non-agricultural assessment from the occupants even if it is assumed for the sake of argument that the vesting in favour of the Board under cl. (a) of subsec (1) of sec. 29 is absolute. In the affidavit in reply filed on behalf of the State it is contended that the land vested in the petitioner Board and, therefore, in view of sec. 45 of the Land Revenue Code, the land became liable to payment of land revenue. Sec. 45 provides that all land, whether applied to agriculture or other purposes, and wherever situated, is liable to payment of land revenue to the Government except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force. It was submitted that sec. 45 refers to all land and, therefore, in the absence of a provision granting immunity from the payment of land revenue, the Board will be liable to pay the amount claimed by way of non-agricultural assessment. We have come to the conclusion that the vesting in the Board is not absolute but is for the limited purpose of administration, control and management only. The lands and buildings falling within the area of Port of Kandla, therefore, continue to belong to the Central Government and, hence, the immunity of Art. 285 would be available to the Central Government. The State Government, therefore, cannot recover the non-agricultural assessment sought to be recovered under the impugned demand, Ann. A, to the petition.

**[37]** We propose to make it clear that we have not considered the question whether the Government or the Municipality would be entitled to levy and collect taxes from lessees/occupants, owners of superstructures and other third parties who do not figure in this litigation. Our observations in this judgment should be read and understood as applicable only to this question whether the State Government is entitled to recover non-agricultural assessment from the Board. There was no dispute before us bearing on the question of recovery of municipal taxes and we have not gone into that question. If such a question arises in future or is presently pending, it will have to be decided on its own

merits.

**[38]** Before we conclude we must record our appreciation for the able assistance rendered to us by the learned counsel appearing for the rival parties in these two appeals.

**[39]** In this view of the matter, we concur with the conclusion reached by our learned brother and hold that the writ of mandamus was rightly issued against the State Government and its officers requiring them to desist and forbear from giving effect to the impugned notice of demand and from enforcing the same. We accordingly dismiss the appeals, but having regard to the facts of the case, we do not make any order as to costs.

Appeals dismissed.