

(2011) 01 BOM CK 0137

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 4513 of 2010

Skoda Auto India Pvt. Ltd.

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: Jan. 31, 2011

Acts Referred:

- Bombay Motor Vehicles Tax Act, 1958 - Section 20
- Bombay Village Panchayats Act, 1958 - Section 124, 124(1), 124(5), 124(6), 125
- Civil Procedure Code, 1908 (CPC) - Section 9A
- Constitution of India, 1950 - Article 226, 227, 243, 243B, 276
- Maharashtra Industrial Development Act, 1961 - Section 17, 32(2)
- Maharashtra Regional and Town Planning Act, 1966 - Section 113
- Maharashtra Village Panchayats Taxes and Fees Rules, 1960 - Rule 7

Hon'ble Judges: A.A. Sayed, J

Bench: Single Bench

Advocate: R.N. Dhorde and N.R. Bhavar, for the Appellant; K.B. Choudhari, AGP for Respondent Nos. 1 to 3 and 11, V.D. Sapkal, D.R. Kale for Respondent Nos. 4 and 5, S.S. Dande and U.B. Bondar, for Respondent Nos. 7 to 10, for the Respondent

Judgement

A.A. Sayed, J.

Rule. Rule made returnable forthwith and heard finally by consent of Counsel for the parties. Respective Counsel for Respondents waive service of notice.

2. By the above petition, the Petitioner impugns the order dated 16.4.2010, passed by Respondent No. 11 Minister, Rural Development, State of Maharashtra, in an application/revision (styled as such by the Petitioner) purportedly filed u/s 124(6) of the Bombay Village Panchayats Act, 1958 which application/revision came to be dismissed. The said application/revision was filed against the decision of Respondent No. 8 Standing Committee, Zilla Parishad, Aurangabad dated 17.8.2009

dismissing the 2nd Appeal of Petitioner, thereby affirming the order dated 15.1.2009 passed by the Respondent No. 7 Block Development Officer, Panchayat Samiti, dismissing the 1st Appeal of the Petitioner.

3. The controversy involved in the petition is in respect of payment of property taxes by the Petitioner (hereinafter referred to as "Skoda") pertaining to Assessment Years 200607 to 200809 pursuant to the demand bills/notices issued by the Respondent No. 4 Gram Panchayat.

4. Respondent No. 1 is the State of Maharashtra through it's Chief Secretary. Respondent No. 2 is the Principal Secretary, Rural Development Department. Respondent No. 3 is the Principal Secretary, Industrial Development. Respondent No. 4 is the Gram Panchayat, Kumbephal Taluka, District Aurangabad. Respondent No. 5 is the GramSevak of Respondent No. 4. Respondent No. 6 is the Maharashtra Industrial Development Corporation (hereinafter referred to as "MIDC"). Respondent No. 7 is the Block Development Officer, Panchayat Samiti, Aurangabad (hereinafter referred to as "BDO, Panchayat Samiti"). Respondent No. 8 is the Standing Committee, Zilla Parishad, Aurangabad through it's Chairman. Respondent No. 9 is the Chief Executive Officer, Zilla Parishad, Aurangabad (hereinafter referred to as "CEO, ZP"). Respondent No. 10 is the Deputy Chief Executive Officer, Zilla Parishad, Aurangabad. Respondent No. 11 is the Minister, Rural Development, Maharashtra State.

5. Brief facts of the case need to be stated. They are as under:

The Petitioner Skoda Auto India Pvt. Ltd., is a company registered under the Companies Act, 1956, and is engaged in the business of manufacture and sale of cars under the brand name "Skoda". A Memorandum of Understanding dated 13.1.2000 (hereinafter referred to as "MOU") was signed between the Government of Maharashtra and Skoda for implementation of a project of setting up a manufacturing unit of Skoda at Aurangabad. The MOU was signed in furtherance to a Joint Letter of Intent between the Government of Maharashtra and Skoda, which was signed in Czech Republic in October 1997, whereby it was agreed to explore the possibility of establishing a car manufacturing unit in the District of Aurangabad.

6. By notification dated 4.12.1997 u/s 32(2) of the Maharashtra Industrial Development Act, 1961, (MID Act for the sake of brevity), Government of Maharashtra acquired certain lands for development as an Industrial Area, by following due process of law and handed over the same to MIDC. MIDC in turn leased the land admeasuring 30 hectares or thereabout to Skoda by executing a Lease Deed dated 03.11.2004 for term of 95 years, which Lease Deed was executed in furtherance to an Agreement of Lease which was entered into between the parties on 23.07.03. MIDC was accordingly levying and recovering fees in the nature of service charges as prescribed by the Government of Maharashtra under the MID Act, 1961, from Skoda in respect of the common amenities provided by it.

7. On 26.4.2006, the Gram Panchayat Respondent No. 4 issued demand notice for payment of taxes u/s 124(1) of the Bombay Village Panchayat Act, 1958 (hereinafter referred to as "BVP Act"), claiming a sum of ` 45,89,434.93 from Skoda for three years viz. 200304, 200405 and 200506. Skoda, by its letter of even date viz. 26.4.2006 addressed to the Gram Panchayat made a request to grant maximum rebate and also requested the Gram Panchayat to enter into an Agreement for lumpsum contribution in lieu of taxes levied by the Gram Panchayat as per the provisions of Section 125 of the BVP Act. Accordingly on 7.12.2006, an Agreement for lumpsum contribution in lieu of taxes, came to be executed between Skoda and Gram Panchayat, whereunder taxes for Assessment Years 200304 to 200506 were reduced from ` 45,89,434.93 to ` 23,00,000/. The said Agreement was approved by the Standing Committee, ZP as well as by the Divisional Commissioner, Aurangabad.

8. Despite the Agreement dated 7.12.2006 entered into between Skoda and Gram Panchayat, taxes for the Assessment Years 200304 to 200506 of the agreed amount of ` 23,00,000/ remained to be paid by the Skoda and notices of demand dated 14.6.2007, 6.7.2007 and 29.8.2007 came to be issued by the Gram Panchayat to Skoda. An attachment notice dated 20.12.2007 also 7 WP4513.10.sxw came to be issued on failure on the part of Skoda to make payment. By its letter dated 4.1.2008 Skoda thereafter terminated the Agreement dated 7.12.2006 under which it had agreed to pay lumpsum contribution of ` 23,00,000/ to the Gram Panchayat in lieu of taxes.

9. Skoda, then proceeded to file Special Civil Suit No.5302/2007 before the Joint Civil Judge, Senior Division, Aurangabad, challenging the final bill and demand notices. In the said suit, an Application came to be filed by Gram Panchayat u/s 9A of Code of Civil Procedure, 1908 questioning jurisdiction of the Court and maintainability of the said suit. The said suit came to be dismissed by order dated 13.2.2008 in view of the remedy of Appeal provided under Sub-section (5) of Section 124 of BVP Act.

10. Skoda, aggrieved by that order, filed First Appeal No. 910 of 2008 before this Court, which came to be admitted and is pending. Civil Application No. 2266 of 2008 for stay was filed in the First Appeal and Skoda was granted stay subject to deposit of the amount of ` 23,00,000/, which was accordingly deposited. On a Civil Application filed by the Gram Panchayat, the Gram Panchayat was allowed to withdraw the said amount deposited by 8 WP4513.10.sxw Skoda in this Court. It is to be noted that the aforementioned notices of demand and litigation arising therefrom is the initial round of litigation between the parties pertaining to Assessment Years 200304 to 200506 and is not the subject matter of the present petition, though the same is relevant and narrated to give the background on which the dispute between the parties has proceeded.

11. Round two of the litigation with which we are really concerned in the present petition, arises from the demand of taxes by the Gram Panchayat from Skoda of a sum of `89,70,850.87p for the Assessment Years 200607 to 200809. The said amount

was demanded from Skoda vide bill dated 17042008 issued by the Gram Panchayat. It is to be borne in mind, that the Agreement dated 17.12.2006 of lumpsum contribution in lieu of taxes between Skoda and Gram Panchayat was pertaining to taxes for the Assessment Years 200304 to 200506 (and which taxes are the subject matter of First Appeal No. 910/2008) and that for the period April 2006 March 2009 there is no such Agreement of lumpsum contribution in lieu of taxes executed between the said parties.

12. Further notices/reminders were sent by Gram Panchayat 9 WP4513.10.sxw to Skoda on 2.5.2008 and 31.7.2008 in respect of taxes for the period from 200607 to 200809. The same were replied to by Skoda vide its letter dated 13.8.2008. Gram Panchayat thereafter issued final bill dated 25092008 as per Section 129(2) of the BVP Act. Pursuant thereto, Skoda, this time round, filed an Appeal on 24102008 u/s 124(5) of the BVP Act before the BDO, Panchayat Samiti Respondent No. 7, questioning the demand. A Misc. Application was also filed by Skoda in the First Appeal for adding Chief Secretary, Government of Maharashtra and Principal Secretary, Industrial Development Department, Government of Maharashtra, as a party Respondents in the said Appeal, which Misc. Application came to be rejected on 28.11.2008. The order dated 28.11.2008 in the Misc. Application was challenged by Skoda before the CEO, Standing Committee, ZP, Aurangabad. In the meantime, however, the BDO, Panchayat Samiti, heard the Appeal finally and dismissed the same by his order dated 15.01.2009.

13. Skoda, thereafter, preferred 2nd Appeal u/s 124(5) of BVP Act on 13022009 before the CEO, Standing Committee, ZP, Aurangabad, calling in question the final order dated 15012009 of BDO, Panchayat Samiti. The hearing of the 2nd Appeal came to be fixed before the Dy. CEO, Standing Committee, 10 WP4513.10.sxw when Skoda pointed out that the Appeal under the provisions of Section 124(5) was required to be heard by the CEO and not Dy CEO, Standing Committee, ZP. It appears that the 2nd Appeal thereafter was placed before the CEO, Standing Committee, ZP. During the pendency of the 2nd Appeal, Gram Panchayat issued an attachment notice dated 12.5.2009, consequent to which Skoda filed Misc. Application dated 14.5.2009 before the CEO, Standing Committee, ZP, for stay. As the said Misc. Application remained pending and was not decided, Skoda filed a petition being Writ Petition No. 3137/2009 in this Court on 22.5.2009, inter alia praying for directions to the Respondent No. 8 Standing Committee, ZP to decide the pending Appeal before it and not to take any coercive action against it till then. The said Writ Petition came to be disposed of by the Division Bench of this Court vide order dated 27.8.2009, by recording the statement of Counsel for the Respondent No. 8 (therein) Standing Committee, ZP, that the Petitioner (Skoda) was already heard on 1.7.2009, and that orders would be passed by the Standing Committee in accordance with law, within a period of 15 days. In view of that statement, the Writ Petition came to be dismissed as withdrawn and the ad interim relief was directed to be continued for a period of 15 days from the date of

communication of the decision of the Appeal in order to facilitate Skoda to avail any alternate remedy if available in law 11 WP4513.10.sxw to challenge the said decision, in the event, the decision was adverse to its interest. It appears that the Counsel for Petitioner Skoda and the Respondent No. 8 (therein) Standing Committee, ZP, were not instructed properly and the Court was not informed that before the passing of the order dated 2782009 in the aforesaid Writ Petition, the Appeal had already by then been decided by the Respondent No. 8 Standing Committee vide order dated 1782009. The said order dated 17082009 passed in the 2nd Appeal was communicated to Skoda by letter dated 07.09.2009.

14. Being aggrieved by the order dated 17.8.2009 in the 2nd Appeal, Skoda, then filed an application/revision (styled as such by Skoda) purported by u/s 124(6) before the Minister, Rural Development, State of Maharashtra Respondent No. 11. It appears that in the meanwhile, the Gram Panchayat issued further notices including attachment notice dated 5.1.2010. Skoda, thereafter, filed an Application for stay to the attachment during the pendency of revision/application, which came to be allowed by the Minister. The application/revision came to be ultimately rejected by the Minister by his order dated 16.4.2010. It is this order dated 16.4.2010, rejecting the application/revision of Skoda, which is the subject matter of above petition.

15. I have heard Shri R.N. Dhorde for the Petitioner, learned A.G.P. Shri K.B. Choudhari for Respondent Nos. 1 to 3 and 11, Shri V.D. Sapkal for Respondent Nos. 4 and 5, Shri S.S. Dande for Respondent No. 6 and Shri U.B. Bondar for Respondent Nos. 7 to 10.

16. Shri Dhorde, on behalf of Skoda, has raised the following contentions:

I That considering the clauses in the MOU dated 13012000 between the State of Maharashtra and Skoda and the Lease Deed dated 3112004 between MIDC and Skoda, the doctrine of promissory estoppels would be applicable against the State Government and the Gram Panchayat is stopped from charging any amount over and above the amount of ` 3 lacs towards taxes as specified in the Lease Deed.

II That the Gram Panchayat does not have authority to levy taxes when the property is vested in the State Government/MIDC and 13 WP4513.10.sxw that in any event it is not permissible for the Gram Panchayat to levy taxes on Skoda when no amenities/facilities are provided by the Gram Panchayat since Skoda was already paying fees/service charges to MIDC for the common amenities.

III That the 2nd Appeal filed by Skoda u/s 124(5) of the BVP Act was required to be heard by all the Standing Committee members of the ZP and not by the CEO, Standing Committee, ZP.

CONTENTION No. I

17. Shri Dhorde, learned Counsel for Skoda submitted that the Government of Maharashtra and Skoda had signed a Joint Letter of Intent in Czech Republic in October, 1997, agreeing to explore the possibilities of establishing a car manufacturing unit in the district of Aurangabad and that the Government of Maharashtra had shown its willingness to provide all necessary help, support and assistance to facilitate the start of the project. He submitted that in furtherance of the Letter of Intent, an MOU dated 13th January 2000, was executed between Skoda and Government of Maharashtra, which MOU was signed by Chief Secretary, Government of Maharashtra, Principal Secretary, Industrial Development, Government of Maharashtra and CEO of MIDC. The learned Counsel alluded to clauses 3 and 12 of the MOU, which read as under:

3. The final site shall be at the Maharashtra Industrial Development Corporation (MIDC) area at Shendra District Aurangabad. The GOM shall provide the necessary infrastructural support. SKODA shall enter into an Agreement with MIDC and other concerned agencies for all the required infrastructural facilities in terms of land, electricity, water, roads, pollution control, etc. MIDC shall coordinate to make such requirements available to the PROJECT at mutually agreed time schedules. These Agreements shall be part of this Memorandum of Understanding.

...

12. GOM shall assist and facilitate SKODA, to the extent appropriate and permissible under law in settling disputes, if any, with the concerned Gram Panchayat with respect to taxes.

18. Learned Counsel further pointed out the recital in the Lease Deed dated 3rd November, 2004 executed between MIDC and Skoda wherein it is stated as follows:

AND WHEREAS, for the purpose of stamp duty, recurring charges such as Government revenue, the Lessor's share of cesses and the Lessee's share of Municipal or village Panchayat rate or taxes which the Lessee has agreed to bear and pay under these presents although by law recoverable from the Lessor has been estimated at Rs. 3,00,000/(Rupees three lakhs) approximately per annum.

19. Relying upon the aforesaid clauses and recital, learned Counsel for Skoda submitted that it was based on the promise of the Government of Maharashtra that Skoda, who is a leading manufacturer of automobiles, decided to establish its manufacturing unit at MIDC, Industrial Area, Shendra Taluka, District Aurangabad and that it was only in pursuance of that promise that the manufacturing unit ultimately came to be established by Skoda. He submitted that as set out in Clause 3 of the MOU, the Lease Deed between MIDC and Skoda executed on 31/12/2004 also forms a part of the MOU entered into between Government of Maharashtra and Skoda. He submitted that considering the clauses and recital reproduced above, the Gram Panchayat would now be stopped from levying any amount in the form of taxes over and above the sum of ` 3 lacs per annum in respect of the unit of Skoda.

Learned Counsel submitted that 16 WP4513.10.sxw when the Government of Maharashtra had by its conduct made a promise, that promise would be binding upon it and that the Government of Maharashtra cannot go back upon it, particularly when Skoda had acted upon the promise and altered its position thereby and therefore, the doctrine of promissory estoppel would come into play and be applicable as against the Government of Maharashtra. He submitted that the Government of Maharashtra cannot be immune from the applicability of the rule of promissory estoppel which is an equitable doctrine and must yield when equity so requires. He contended that in view of the promise held out the Government of Maharashtra and MIDC which is an instrumentality of the State Government, any levy of taxes by the Gram Panchayat over and above the sum of ` 3 lacs would be bad in law. The learned Counsel draws support from the following rulings: (1) [Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others,](#) (2) [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,](#) (3) [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another,](#) (4) [Union of India \(UOI\) and Others Vs. Indo-Afghan Agencies Ltd.,](#) wherein the doctrine of promissory estoppels and legitimate expectation has been discussed in the context of promises held out by the Government/local authorities.

20. Shri Sapkal, learned Counsel for Gram Panchayat in response to the arguments made on behalf of Skoda submitted that the interpretation sought to be put by Skoda to Clause 12 of the MOU is incorrect, inasmuch as it is only stated in said clause that the Government of Maharashtra shall assist and facilitate Skoda to the extent appropriate and permissible under law in settling the disputes., if any, with the Gram Panchayat with respect to the taxes. He submitted that there is no such promise held out by the Government of Maharashtra as suggested on behalf of Skoda. As regards the recital clause contained in the Lease Deed dated 3rd November, 2004 between MIDC and Skoda, the learned Counsel submitted that the Gram Panchayat is not bound by the terms of the said Lease Deed or the estimates by MIDC as regards the quantum of Gram Panchayat rates or taxes which were estimated to be around ` 3 lacs per annum by MIDC without any basis, as appearing in the said Lease Deed. He submitted that in any event, Skoda has thereafter itself entered into an Agreement dated 7th December, 2006 with the Gram Panchayat, wherein Skoda, as per the provisions of Section 125 of BVP Act, agreed to pay a lump sum contribution of ` 23 lacs in lieu of taxes of ` 45,89,434.93 for the period from April 2003 to March 2006 towards Gram Panchayat taxes for open land, constructed and other developed area by Skoda. Learned Counsel adverted to the letter dated 16th April, 2006 written by Skoda to Gram Panchayat wherein Skoda has requested to grant maximum rebate and also requested Gram Panchayat to enter into an Agreement with it for lumpsum contribution in lieu of taxes as per Section 125 of the BVP Act. Learned Counsel questioned the conduct and bonafides of Skoda and submitted that though the amount of taxes was to the extent of ` 45,89,434.93p

for the period from April 2003 to March 2006 and the Gram Panchayat had at the request of Skoda entered into an Agreement dated 7th December, 2006, whereunder the amount was reduced to ` 23 lacs, Skoda, however, did not pay any amount to the Gram Panchayat and terminated the said Agreement and denied its liability and proceeded to file a suit in the Court of Jt. Civil Judge, Sr. Division, Aurangabad. Learned Counsel submitted that the Agreement between Gram Panchayat and Skoda had sanction of the Government of Maharashtra also under the provisions of Section 125 of BVP Act. The Learned Counsel submitted that insofar as the subject matter of present notices are concerned, they relate to the demand of taxes for the period thereafter i.e. from April 2006 to March, 2009, in respect of which there was no Agreement of lumpsum contribution and that inspite of demand bill dated 17th April, 2008 for an amount of ` 89,70,850.87p for the said period, so far Skoda has not paid any amount towards taxes. He contended that having entered into the Agreement for lumpsum contribution in lieu of taxes for the earlier period i.e. from April 2003 to March 2006 and agreeing to pay taxes, it is now not open for Skoda to invoke the doctrine of promissory estoppel in respect of taxes even for the subsequent period viz. April 2006 to March 2009.

21. I have heard the rival submissions of the Counsel on contention No. I. On a plain reading of Clause 12 of MOU dated 13th January, 2000, I do not find any such promise held out by the Government of Maharashtra as is sought to be suggested by learned Counsel for Skoda. Clause 12 merely states Government of Maharashtra (GOM) shall assist and facilitate SKODA, to the extent appropriate and permissible under law in settling disputes, if any, with the concerned Gram Panchayat with respect to taxes. In fact, implicit in the aforesaid Clause 12, is the fact that Skoda would be liable to pay taxes to the Gram Panchayat. Thus, in my view, there was no such promise by the Government of Maharashtra in the MOU dated 13th January 2000. It is significant 20 WP4513.10.sxw to note that the said MOU itself sets out in Clause 11 the eligible taxes, exemptions, benefits, and incentives applicable under the scheme of incentives and other dispensations which Skoda was entitled to. Clause 11 of said MOU reads as under:

11. For abundant clarity, it is hereby understood by both the parties that PROJECT is eligible for tax exemptions, benefits and incentives which shall mean and include, among other things, the following as may be applicable under the scheme of incentives and other dispensations of GOM:

(i) Exemption of sales tax, additional sales tax and turnover tax payable on sale of its finished products (as in GR dated 7th May 1993 and the relevant provisions of the Sales tax laws and procedures)

(ii) Central sales tax payable on sale of its finished products in the course of interState trade (as in GR dated 7th May, 1993)

(iii) Sales tax incentives by way of deferral in respect of the sales tax liability (as in GR dated 7th May, 1993)

(iv) Refund of Octroi Entry tax payable (in lieu of octroi) if applicable as in GR dated 7th May, 1993.

(v) Exemption of Electricity duty in case the PROJECT qualifies for classification as a Mega Project (as in GR dated 28th November 1997)

(vi) Exemption of Stamp duties on documentation for mortgage of assets to financial institutions for raising loans and for acquisition of land (as in GR dated 27th November, 1997) in case the PROJECT qualifies as a Mega Project, and in case it does not so qualify, then stamp duty exemption as specified in GOM Revenue and Forests Department Order No. Mudrank 1097/CR15/M1 dated 31st March, 1997 (valid at present upto 31st March, 2000).

Thus, on a perusal of the above clauses it would be seen that even in the MOU dated 13012000 there is no express exemption in respect of property taxes provided to Skoda.

22. Insofar the Lease Deed dated 3rd November 2004 between MIDC and Skoda is concerned, Clause 2(b) and 2(c) which deal with the covenants regarding taxes, fees and other charges are relevant. They read as under:

2. The Lessee with intent to bind all persons into whosoever hands the Leased Premises may come doth hereby covenant with the lessor as follows:

(a)...

(b)To pay all existing and future taxes, rates, assessments and outgoings of every description for the time being payable either by landlord or tenant or by the occupier in respect of the leased Premises and anything for the time being thereon.

(c)Throughout the said term hereby created to pay to the Lessor from time to time such recurring fees in the nature of service charges/drainage cess as may from time to time prescribed by Government of Maharashtra under Maharashtra Industrial Development Act, 1961 or Rules framed there under in respect of the amenities or common facilities provided by the Lessor.

Thus, the aforesaid Lease Deed between MIDC and Skoda itself spells out that over and above the fees in the nature of service charges payable to MIDC as mentioned in Clause 2(c), Skoda is also required to pay all taxes, rates, assessments and outgoings of every description as mentioned in Clause 2(b).

23. It is pertinent to note that on the one hand, Skoda claims that in view of the alleged promises held out by the Government of Maharashtra and MIDC in the MOU dated 13012000 and the Lease Deed dated 31104 it was not liable to pay any taxes over and above ` 3 lacs, on the other hand however, Skoda itself in later point of

time entered into an Agreement dated 7th December, 2006 with the Gram Panchayat wherein it has agreed to pay taxes as lumpsum contribution in lieu of taxes as per Section 125 of BVP Act for the period from April 2003 to March 2006 in respect of open land, constructed and under developed area, after the Gram Panchayat agreed to reduce the taxes from `45,89,434,93 to ` 23 lacs. Pertinently, there is not a whisper in the present petition as to why, if Skoda were not liable to pay any taxes over ` 3 lacs p.a. as sought to be suggested, did it choose to enter into the aforesaid Agreement dated 7th December, 2006 with the Gram Panchayat agreeing to pay ` 23 lacs in taxes for the period April 2003 to March 2006. It is also significant to note that Skoda itself had addressed a letter dated 26th April, 2006 to the Gram Panchayat requesting the Gram Panchayat to grant maximum rebate in taxes and to enter into an Agreement as per the provisions of Section 125 of BVP Act for payment of lump sum contribution in lieu of taxes which was accordingly reduced by 50% i.e. from about ` 46 lacs to ` 23 lacs.

24. Indeed, Clause 3 the MOU between Government of Maharashtra and Skoda specifically states that the Agreement entered into by Skoda with the MIDC and other agencies shall be part of the MOU. However on a closer reading of the said clause it is evident that the same relates only to Agreements in connection with infrastructural facilities in terms of land, electricity, water, roads, pollution control, etc. which MIDC was required to coordinate and to make such requirements available to the project on mutually agreed time schedules. Insofar as the estimate by MIDC of taxes at ` 3 lacs payable to the Gram Panchayat as appearing in the Lease Deed is concerned, such estimate, in my view, can in no manner be treated as any commitment or promise held out by the Government of Maharashtra through MIDC. In any event, in view of the subsequent act of Skoda in having entered into an agreement to pay lumpsum contribution of ` 23 24 WP4513.10.sxw lacs in lieu of taxes, thereby acknowledging its liability and agreeing to pay taxes to the Gram Panchayat the "estimate" of property taxes by MIDC would be inconsequential and it would now not be open for Skoda to question the levy by alluding to the purported promise held out by Government of Maharashtra or otherwise.

25. The doctrine of promissory estoppel, in view of the aforesaid discussion, would, in my opinion, not be applicable in the facts of the instant case. Really speaking, after having entered into the Agreement dated 7th December, 2006 with the Gram Panchayat to pay lump sum contribution in lieu of taxes for the period April 2003 to March 2006, without any demur or protest, Skoda would be stopped from challenging the levy of taxes by the Gram Panchayat. Having come to the conclusion that there were no such promise held out by the Government of Maharashtra and that the doctrine of promissory estoppels would not be applicable, the judgments cited by the learned Counsel for Skoda would have no relevance in the fact situation of the case in hand.

26. For the aforesaid reasons, I find no merit in contention No.I and the same would have to be rejected.

Contention No. II

27. The learned Counsel for Skoda submitted that Skoda is already paying fees in the nature of services charges to MIDC towards common amenities provided by MIDC and therefore Skoda was not liable to pay any further amount towards taxes to Gram Panchayat particularly when no facilities or amenities are provided by the Gram Panchayat. The learned Counsel further submitted that the Gram Panchayat did not have any authority to levy taxes and that the levy would amount to double taxation.

28. Learned Counsel for the Gram Panchayat on the other hand, submitted that Section 124 of BVP Act, clearly authorizes the Gram Panchayat to levy taxes. The learned Counsel contented that by entering into an Agreement for the earlier period viz. April 2003 to March 2006, which provided for paying lump sum contribution in lieu of taxes to Gram Panchayat as per Section 125 of BVP Act, Skoda had clearly acknowledged its liability to pay taxes and it would now not be open for Skoda to question the levy of taxes by Gram Panchayat. Learned Counsel submitted that the liability of payment of taxes by Skoda for the period April 2006 to March 2009 is to the tune of almost ` 90 lacs and Skoda has chosen not to enter into any further Agreement in respect of lump sum contribution in lieu of taxes. He submitted that Skoda has not paid single farthing for the aforesaid period and even for the period from April 2003 to March 2006, in spite of the Agreement between the parties, Skoda had wrongly denied its liability to pay taxes and proceeded to file a suit against the Gram Panchayat questioning the levy of taxes. The learned Counsel relied upon the judgment of the Division Bench of this Court in the case of [BIMA Office Premises Co-operative Society and etc. Vs. Kalamboli Village Panchayat and Others](#), in support of his submission that so long as Gram Panchayat continues to be in existence it has a right to levy the taxes on land and buildings situated within its jurisdiction. The learned Counsel also placed reliance upon an interlocutory order dated 29082007 in Writ Petition No. 5864 of 2006 (alongwith companion matters) of the Division Bench of this Court in the case of Bajaj Auto Limited v. Gram Panchayat Jogeshwari and Ors., wherein in identical facts, the Division Bench of this Court, whilst alluding to the case of Bima Office premises (supra), observed in para 9 and 10 as under:

9. Learned Senior Counsel Shri. Dixit appearing for the Petitioner submitted that as Petitioners are paying service charges to the Industrial Corporation, they are not entitled to pay property tax to Gram Panchayat. We find that the Gram Panchayat is not agreeing to receive lump sum contribution in lieu of all or any of the taxes levied by the Panchayat from the Petitioner. These questions raised by the contesting parties are required to be addressed by us.

10. Having due regards to the submission advanced by the learned Counsel appearing for the respective parties and in view of the provisions of the Act of 1958 and rules made thereunder, we are inclined to admit the petition. Learned Senior Counsel has prayed for grant of stay to recovery of property tax. The request made by the learned Senior Counsel has been vehemently opposed by the learned Counsel appearing for the Panchayat. We have considered the submission on the prayer of grant of stay to the recovery of property tax. We therefore proceed to pass following order:

Rule.

Interim relief in terms of prayer clause D subject to the Petitioner's depositing 50% of the property taxes levied under the impugned demand notice by the Respondent Gram panchayat in this Court within 8 weeks from today.

29. Learned Counsel for the Gram Panchayat pointed out that the aforesaid order was challenged before the Supreme Court and the Supreme Court by its order dated 25th February, 2008 dismissed the Special Leave Petition. The Learned Counsel for MIDC, invited my attention to the letter dated 4.7.2007 (Exh "Z4" to the petition) wherein MIDC had in response to the letter written to it by Skoda, had made it clear that Skoda was required to pay the property taxes to the Gram Panchayat and Skoda would alone be responsible if any legal action is taken by the Gram Panchayat.

30. I have heard the Counsel for the parties on contention No. II. Before I deal with the legal aspect of the matter it would be appropriate to refer to certain recitals/clauses in the Lease Deed dated 03112004 between MIDC and Skoda and the Agreement dated 0712 2006 between the Gram Panchayat and Skoda. In the Lease Deed dated 03112004 entered into between MIDC and Skoda, the covenants of Skoda as stipulated in Clause 2(b) and 2(c) are relevant. At the cost of repetition, they are reproduced hereunder:

2. The Lessee with intent to bind all persons into whosoever hands the Leased Premises may come doth hereby covenant with the lessor as follows:

a)...

(b) To pay all existing and future taxes, rates, assessments and outgoings of every description for the time being payable either by landlord or tenant or by the occupier in respect of the leased Premises and anything for the time being thereon.

(c) Throughout the said term hereby created to pay to the Lessor from time to time such recurring fees in the nature of service charges/drainage cess as may from time to time prescribed by Government of Maharashtra under Maharashtra Industrial Development Act, 1961 or Rules framed there under in respect of the amenities or common facilities provided by the Lessor.

From the aforesaid covenants, it is evident that even in the Lease Deed dated 3rd November, 2004 entered into between MIDC and Skoda, Skoda had agreed to pay all existing and future taxes, charges and outgoing of every description for the time being over and above service charges payable to MIDC.

31. Admittedly thereafter Skoda itself had entered into an Agreement with the Gram Panchayat dated 7th December, 2006 for lumpsum contribution in lieu of taxes under the provisions of Section 125 of the BVP Act. The said Section 125 reads thus:

125. Lump sum contribution by factories in lieu of taxes levied by Panchayat:

(a) Subject to any rules that may be made under the Act, and regard being had to the fact that a factory itself provides in the factory area all or any of the amenities which such Panchayat provides, a Panchayat may arrive at an Agreement with any factory with the sanction of the State Government to receive a lump sum contribution in lieu of all or any of the taxes levied by the Panchayat.

(b) Where no such Agreement as is referred in to Sub-section (1) can be reached the matter may be referred to the State Government in the manner prescribed and the State Government after giving to the Panchayat and the factory concerned an opportunity of being heard decide the amount of such contribution. The decision of the State Government shall be binding on the Panchayat and the factory concerned.

32. It would also be beneficial here to extract certain recitals/clauses of the aforesaid Agreement dated 7/12/2006 between the Gram Panchayat and Skoda executed as per the provisions of the aforesaid Section 125 of BVP Act. They read as follows:

Whereas pursuant to Section 124 of Bombay Village Panchayats Act, 1958 the Gram Panchayat is empowered to levy taxes, fees and charges in its area of operation.

Whereas pursuant to Section 125 of Bombay Village Panchayats Act, 1958, the Gram Panchayat is further empowered to execute an Agreement with the sanction of the State Government to receive a lump sum contribution in lieu of all or any of the taxes levied by the Gram Panchayat.

AND WHEREAS the parties hereto wish to reduce into writing, the terms and conditions of the Agreement reached between themselves for payment of yearly lump sum amount towards various service charges which are as follows:

1. That the Gram Panchayat shall be paid a lump sum amount of Rs. 23,00,000/(Rupees Twenty Three Lakhs only) towards Gram Panchayat tax for the open land, constructed and under developed area by SAIPL at plot No. A1/1, MIDC, Industrial Area, Shendra, Aurangabad.

2. The Gram Panchayat represents and warrants that the above lump sum settlement towards Gram Panchayat tax will be full and final towards all the taxes/fees/charges of Gram Panchayat for the period beginning from April 2003 to March 32 WP4513.10.sxw 2006 and that no additional amount will be

levied/collected in this respect.

3. That SAIPL shall not be liable for any other additional amount other than as per Article 1 and 2 above. However, if any further construction of expansion work is carried out by SaipI then the applicable taxes/charges/rates etc.. will be as prevailing at that time and or settled by virtue of a mutual Agreement.

4. That the parties have agreed on the following charges on lump sum basis:

5. Total tax calculated and the agreed lump sum payable on constructed area, open area and underdeveloped area from the year 2003 to year 2006 is as per Annexure 1 enclosed herewith.

6. In the event of any new or pending application/petition/appeal etc. with respect to the Grampanchyat tax/fee/charge etc. before the concerned authorities (including but not limited to the Hon"ble High Court) is decided, then the parties hereto agree that they shall adhere to all such decisions.

Thus in the recitals of the aforesaid Agreement dated 7122006 reproduced above, Skoda itself in no uncertain terms has acknowledged that the Gram Panchayat is authorized to levy taxes u/s 124 of the BVP Act. Moreover, Skoda had also agreed to pay the reduced taxes in terms of the said Agreement to the Gram Panchayat. The said Agreement has been admitted by Skoda. It is not the case of Skoda had it had signed the said Agreement on account of any coercion or misrepresentation by Gram Panchayat in any case there is not a whisper in the petition on those lines. On the contrary by letter 24.6.2006, Skoda itself had requested the Gram Panchayat for maximum rebate in the taxes and also requested the Gram Panchayat to enter into an Agreement for lumpsum contribution in lieu of taxes payable to Gram Panchayat as provided u/s 125 of BVP Act and accordingly the said Agreement came be executed between the parties reducing the taxes to ` 23 lacs from about ` 46 lacs. For Skoda to now turn round and question the levy of taxes by the Gram panchayat is curious to say the least and appears to be only an afterthought.

33. Since the authority of the Gram Panchayat to levy taxes is also questioned, it would be necessary to examine the relevant legal provisions. The source of such authority or power of the Gram Panchayat to levy taxes is traceable to Section 124 of BVP Act. It reads as under:

124. Levy of taxes and fees by Panchayats.

(1) Subject to the minimum and maximum rates which may be fixed by the State Government and in such manner and subject to such exemptions as may be prescribed, a Panchayat shall levy taxes referred to in Clause (i) and (ia) of this Sub-section and where the Panchayat has taken over any water supply schemes under Sub-section (1) of Section 45, it shall also levy taxes referred to in Clauses (viii) and (xii) of this Sub-section and the Panchayat may levy all or any of the taxes and fees referred to in the remaining clauses of this subsection.

- (i) a tax on buildings (whether subject to payment of agricultural assessment or not) and lands (which are subject to payment of agricultural assessment), within the limits of the village;
- (ia) a betterment charge on the lands benefited from schemes or projects undertaken by a Panchayat from the village fund;
- (ii)***
- (iii)a pilgrim tax;
- (iv)a tax on fairs, festivals and other entertainments;
- (v) subject to the provisions of Article 276 of the Constitution, a tax on the following professions, trades, callings or employments, that is to say .
- (a) shopkeeping and hotelkeeping
- (b)any trade or calling (other than agriculture) which is carried on with the help of machinery run by steam, oil or electric power or by manual labour;
- (c)the profession or calling of brokers in cattle markets;
- (vii) a general sanitary cess for the construction or maintenance, or both the construction and maintenance of public latrines and for the removal and disposal of refuse;
- (viii) a general water rate which may be imposed in the form of a rate assessed on buildings and lands or in any other form as may be best adopted to the circumstances of any class of cases;
- viiia) a lighting tax;
- (ix) any other tax (not being a tax or toll on motor vehicles save as provided in Section 20 of the Bombay Motor Vehicles Tax Act, 1958) (Bom. LXV of 1958) which the State Legislature has, under the Constitution, power to impose in the State and which has been sanctioned by the State Government;
- (x) a fee on markets and weekly bazars;
- (xi) a fee on carstands and tonga stands;
- (xii) a special water rate for water supplied by the Panchayat through pipes, which may be imposed in any form including that of charges for such water supplied, fixed in such mode or modes as shall be best adopted in the circumstances of any class of cases;
- (xiii) a fee for the supply of water from wells and tanks vesting in it, for purposes other than domestic use and for cattle;

(xiv) a fee for temporary erection on, or putting up projections over, or temporary occupation of, any public street or place;

(xv) a special sanitary cess upon private latrines, premises or compounds cleaned by the Panchayat agency;

(xvi) a fee for cleaning a cess pool constructed on land whether belonging to a Panchayat or not;

(xvii) a fee for grazing cattle or grazing lands vesting in a Panchayat;

(xviii) a fee on the registration of animals sold in any market or place belonging to or under the control of a panchayat.

(2) The tax on buildings or lands referred to Clause (i) of Sub-section (1) shall be leviable from the owners or occupiers thereof;

Provided that

34. Reference is also required to be made to Maharashtra Village Panchayat Taxes And Fees Rules, 1960, which Rules have been framed by the State Government in exercise of powers conferred by Section 176(2)(xxvi) of BVP Act laying down the manner and the rates at which taxes are leviable. Rule 7 of the said Rules deals with the rate of tax on buildings and lands and the said rates are specified in the Schedule thereto.

35. Insofar as the levy by MIDC is concerned, Section 17 of MID Act 1961 which deals with the power to levy fees or service charges by MIDC needs to be looked at. The said Section 17 reads as follows:

17. Notwithstanding anything contained in any contract or in any law for the time being in force, it shall be lawful for the Corporation to levy fees or service charges to cover its expenses on maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it including provisions of street lighting, at such rates as may be prescribed, from time to time. Such fees or charges may be levied on the plot holders or other persons receiving benefit of the services or amenities.

36. It therefore emerges from the aforementioned provisions of Section 17 of the MID Act and Section 124(1) of the BVP Act that while Section 17 of MID Act provides for levies in respect of fees or service charges to cover the expenses of MIDC relating to maintenance of roads, drainage, water supply, street lighting etc, Section 124(1) of the BVP Act provides for levies of taxes and fees as reflected in the Clauses (i) to (xviii) reproduced hereinabove and both the Authorities viz. MIDC as well as Gram Panchayat are authorized in law for imposing their respective levies as specified hereinabove. In the instant case, the levy by the Gram Panchayat is in respect of tax on buildings is relatable to Clause (i) of Sub-section (1) of Section 124 of the BVP Act. It is therefore apparent that both the levies by the authority's i.e by

the MIDC and the Gram Panchayat are distinct and exclusive. One is a "fee" and the other is a "tax". No question of double "taxation" arises as sought to be suggested. It is a settled law that fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer while a tax is payable for the common benefits conferred by the authority on all tax payers. [See [Sri Krishna Das Vs. Town Area Committee, Chirgaon, , Amir Marut v. State of Maharashtra, 2010\(4\) All MR 596](#)]. It follows therefore that in respect of property tax levied by the Gram Panchayat there is no question of providing any amenities as in the case of MIDC which is providing amenities and levying fees in the nature of service charges therefor. It must however be stated that no arguments were advanced before me in what manner the taxes levied by the Gram Panchayat and the fees/service charges levied by MIDC were overlapping in any manner. In the circumstances, the argument on behalf of Skoda that since the Gram Panchayat is not providing any amenities or facilities and they ought not to impose any taxes, cannot be countenanced.

37. In the case of Bima Office Premises (Supra), the Division Bench of this Court was concerned with the issue of property taxes under the BVP Act in the context of authority to levy of taxes by the Village/Gram Panchayat after exclusion of local area of the village as a site for new town u/s 113 of MRTP Act. The controversy and the question which fell for consideration before the Division Bench is set out in paragraphs 1 and 10 of the said judgment, which read as follows:

1. The Demand Notice issued by the respective Gram Panchayats demanding property taxes from the respective Petitioners and consequent warrants of attachment issued for recovery thereof have given rise to the present petitions.

10 The main question which falls for determination in this petition is as under: Whether the powers and functions of any other local authority immediately existing before the Constitution of the New Town Development Authority would cease to exist by operation of law, no sooner the New Town Development Authority for the area is constituted under Sub-section (3A) of Section 113 of MRTP Act, 1966.

38. The Division Bench in the aforesaid judgment has elaborately examined the scheme under the Constitutional framework of Village/Gram Panchayat. Justice Daga, speaking on behalf of the Division Bench, observed in para 25 to 27 and 31 to 33 as follows:

25. Before proceeding to consider rival contentions, it would be proper to review the relevant provisions of law in this regard. The Panchayat Raj is the foundation of Indian democracy. We have accepted democratic form of Government through our Constitution and consequently, village panchayat is the lowest administrative unit of local self-Government. Article 40 falling in Part IV of the Constitution providing for Directive Principles of State Policy, reads as under:

-40. Organization of Village Panchayats: -The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-Government.

Accordingly, Article 40 of the Constitution requires every State to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as unit of self-Government. In pursuance of the said Directives, the Bombay Village Panchayats Act, 1958 was enacted. The Parliament found that these institutions have not been able to acquire the status and dignity of viable and responsive people's bodies due to number of reasons including lack of financial resources. In view of such shortcomings. Parliament considered it necessary to enshrine in the Constitution certain basic and essential features of Panchayat Raj institutions to provide certainly, continuity and strength to the system of local self-Government. Accordingly, the Parliament has enacted the Constitution (Seventy-Third Amendment) Act, 1992, which came into force with effect from 24th April, 1993, the relevant provisions of which, read as under:

-243. Definitions.-- in this Part unless the context otherwise requires,--

(d)to (c) ...

(d) "Panchayat" means an institution (by whatever name called) of self-Government constituted under Article 243B, for the rural areas;

(e)to(f)

(g) "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

243B. Constitution of Panchayats,--

(a) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.

243H. Powers to impose taxes by, and Funds of, the Panchayats. The Legislature of a State may, by law,--

(e) authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits;

(f) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits;

(g) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State; and

(h) provide for constitution of such Funds for crediting all moneys received, respectively, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.

26. On the aforesaid backdrop, relevant provisions of the BVP Act, 1958, also need consideration to appreciate rival contentions advanced by the parties to the petition. The BVP Act, 1958 extends to the whole of the State of Maharashtra, except the areas falling within the limits of a municipal corporation, municipality or cantonment established by or under any law for the time being in force.

Section 3 of the said Act is the Index providing for various definitions. The relevant definitions for the purposes of this petition are extracted hereinbelow:

-(14) "panchayat" means a panchayat established or deemed to have been established under this Act;

(23) "tax" means a tax, cess, rate or other impost leviable under this (24) "village" and "a group of villages" means the village or, as the case may be, a group of villages specified in the notification issued under Clause (g) of Article 243 of the Constitution of India.

Section 4 provides for declaration of village, the same reads as under:

4. Declaration of village-

(1) Every village specified in the notification issued under Clause (g) of Article 243 of the Constitution of India shall be known by the name of that village specified in that notification.

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is specified in that notification to be a village, the village shall be known by the name of the revenue village, hamlets or, as the case may be, administrative unit or part thereof, having the largest population.

Section 51 enables State Government to vest in the Panchayat, open sites, waste, vacant or grazing lands or public roads and streets, bridges, ditches, dikes and fences, wells, river beds, tanks, streams, lakes, nallas canals water courses, trees or any other property in the village vesting in the Government. Section 51 has been amended to provide that the lands vested in the Panchayats by Government should be available to the Government when they are required for the purpose of National or State Development Plans or for any other public-purpose, without payment of compensation. Section 52 makes a provision and gives powers to the Gram Panchayat to control the erection or re-erection of buildings within its jurisdiction. No person can erect or re-erect any building without previous permission of the Panchayat or contrary to the conditions imposed by the Panchayat and Panchayat has power to stop erection or re-erection or require such person to alter or demolish erected or re-erecting building contrary to the permission of the Panchayat.

27. Section 124 of the said Act deals with power to levy taxes and fees by Panchayat. The relevant part of the said section relevant for the purpose of this petition, reads

as under:

124. Levy of taxes and fees by Panchayats-

(i) Subject to the minimum and maximum rates which may be fixed by the State Govt. and in such manner and subject to such exemptions as may be prescribed, a Panchayat shall levy taxes referred to in Clauses (i) and (i-a) of this Sub-section and where the panchayat has taken over any water supply schemes under Sub-section (1) of Section 45, it shall also levy taxes referred to in Clauses (viii) and (xii) of this Sub-section and the panchayat may levy all or any of the taxes and fees referred to in the remaining clauses of this Sub-section a tax on buildings (whether subject to payment of agricultural assessment or not) and lands (which are not subject to payment of agricultural assessment), within the limits of the village;

(6) if at any time it appears to the State Government on complaint made or otherwise, that any tax or fee leviable by a Panchayat is unfair in its incidence, or that the levy thereof, or any part thereof is obnoxious to the interests of the general public or violates any promises made or undertakings given by the State Government or adversely affects the development of the village or any part thereof, the State Government may require the said Panchayat, within such period as it fixes in this behalf, to take measures for removing any objection which appears to it to exist to the said tax or fee. If, within the period so fixed, such requirement is not carried into effect to the satisfaction of the State Government, the State Government may, after giving the Panchayat an opportunity to give an explanation, by notification in the Official Gazette, suspend the levy of such tax or fee, or such part thereof, until such time as the objection thereto is removed.

Section 146 of the Act provides for dissolution and reconstitution of panchayat on alteration of limits of village, whereas Section 148 deals with the effect in the event of exclusion of area from the village itself.

Section 148 reads as under:

148. Effect of area being excluded from village.--Where u/s 4 any local area forming part of a village is excluded from such village, and such area is not included in or declared to be a village, so much of the village fund and other property vesting in the Panchayat of the village of which such area formed part, as the Commissioner may by order in writing direct, shall vest in the Collector to be utilized for the benefit of the area as the Collector may think fit.

31. The Constitution mandates that no tax shall be levied or collected except by authority of law. It is well established that tax is in the nature of compulsory extraction of money by a public authority for the public purpose to meet general expenses of the State or authority without reference to any special advantage to be conferred upon payers of the tax which is clear from the law laid down by the Apex

Court in the case of [Ratilal Panachand Gandhi Vs. The State of Bombay and Others](#), in the following words (At p. 395):

... .A tax is undoubtedly in the nature of a compulsory extraction of money by a public authority for public purposes, the payment of which is enforced by law. But the other and equally important characteristic of tax is, that the imposition is made for public purpose to meet the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax.

It follows, therefore, that although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied- for general public purposes. Tax is a common burden and the only return which the tax-payer gets is participation in the common benefits of the State.

32. As already found hereinabove in pursuance of the Directive Principles of the State Policy, the Bombay Village Panchayats Act, 1958 was enacted and in order to make democracy meaningful for common people of the State and to ensure their direct participation in the administration, the Panchayat Raj was introduced and to make the village Panchayat, the primary unit of self-Government viable and independent. Seventy-Third Constitution Amendment was introduced in the Constitution and Section 243-H was brought on the statute which especially provides that Legislature of a State of law, shall authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. The Respondent No. 1-Gram Panchayat, therefore, was perfectly justified in contending that the powers conferred upon Respondent No. 1 u/s 124(1)(i) have been recognized by Constitution as recently as in the year 1993. The Respondent No. 1 is further justified in contending that so long as no notification is issued by the State Government in exercise of powers u/s 124(6) of the BVP Act, they are entitled to levy and collect taxes on the lands and buildings and, therefore, the levy of tax and demand thereof is legal and justified.

33. At this juncture, it will be worthwhile to notice that Section 4 of the BVP Act provides for declaration of village. Every village specified in the notification issued under Clause (g) of Article 243 of the Constitution of India is known by the name of that village specified in that notification and where the circumstances so require, provision is made to include or exclude any local area from the local area of a village or to alter the limits of a village or to take away that local area from the concerned village by the notification issued, in the like manner, after consultation with the Standing Committee and upon such declaration local area is either included or excluded shall form the village. With the publication of such notification, the local area is either included or excluded and the limits of the village, accordingly, stand altered. Upon exclusion of the local area of the village, it ceases to be a village under the BVP Act. In the light of the said provisions, we agree with the submissions

advanced by Respondent No. 1 that so long as notification is not issued under Sub-section (2) of Section 4, the Respondent No. 1 Gram Panchayat cannot be said to have ceased to exist. In absence of any such notification by the State, the Respondent No. 1-Gram Panchayat cannot be said to have ceased to be a Gram Panchayat within the provisions of the said Act. It is, therefore, clear that there is no substance in the contention raised by the Petitioners that in view of the constitution of a site for new town u/s 113 of the MRTTP Act, the Respondent No. 1 Gram Panchayat has ceased to exist and, therefore, Respondent No. 1-Gram Panchayat has no right to levy tax on the Petitioners. In our view, so long as Respondent No. 1 continue to exist as a Gram Panchayat, it has a right to levy tax on the lands and buildings situated within its jurisdiction and, consequently, action of Respondent No. 1- Gram Panchayat, levying, assessing and calling upon the Petitioners to pay tax, cannot be said to be bad and illegal.

39. It was sought to be suggested on behalf of Skoda that the claim of Gram Panchayat was exorbitant and at the highest the Gram Panchayat ought to have levied a maximum of ` 23 lacs and not more for the period from April 2006 to March 2009. This suggestion is stated only to be rejected inasmuch as admittedly for the period from April 2006 to March 2009, there is no Agreement in existence for lumpsum contribution in lieu of taxes as per Section 125 of the BVP Act entered into between the parties, as was for the earlier period from April 2003 to March 2006. Infact on it's own showing, even the Agreement dated 7.12.2006 for the earlier period viz. April 2003 to March 2006 was terminated by Skoda itself.

40. It is not in dispute that in the present case, there is no Notification issued by the State Government u/s 124(6) of BVP Act, suspending levy of such taxes or fees livable by the Gram Panchayat.

41. In view of the above discussion, I am unable to accept contention No. II.

CONTENTION III

42. Learned Counsel for Skoda invited my attention to Section 124(5) of the BVP Act. It reads as under:

(i)"Any person aggrieved by assessment, levy or imposition of any tax or fee may appeal to the Panchayat Samiti. A further appeal against the order of the Panchayat Samiti shall lie to the Standing Committee, whose decision shall be final. The first appeal shall be made within thirty days after the presentation of the bill complained, and the further appeal within thirty days from the date on which the Panchayat Samiti decides the appeal.

Relying upon the aforesaid provision, learned Counsel for Skoda submitted that the 2nd Appeal which was filed by Skoda was required to be heard by all the members of the Standing Committee. He submitted that the hearing given in the present case was not as contemplated u/s 124(5) of BVP Act and therefore the order passed by

the Standing Committee, ZP, Aurangabad in the 2nd Appeal is bad in law.

43. Having heard the learned Counsel for the parties, I am unable to accede to the submissions made on behalf of Skoda on this contention also.

44. At the outset, it is required to be noted that no such ground was raised in the application/revision before the Minister. Therefore, it 49 WP4513.10.sxw would now not be open for Skoda to raise this contention. On this ground alone I am not inclined to entertain this contention.

45. Apart from the above, it is interesting to note how Skoda itself has titled the 2nd Appeal. The title is extracted hereunder:

BEFORE THE HON"BLE CHIEF EXECUTIVE OFFICER (STANDING COMMITTEE), ZILLA PARISHAD AT AURANGABAD APPEAL No. OF 2009.

DISTRICT AURGANGABAD

46. It is further interesting to note that in a Misc. Application filed in the said 2nd Appeal the grievance made by Skoda was that the said Appeal is required to be heard and decided only by the Standing Committee i.e. CEO of ZP and not by the Deputy CEO. In the said Misc Application it is stated by Skoda as follows:

The applicant states that considering the above legal provisions of law the present appeal should be heard by Standing Committee that is Chief Executive Officer of Z.P. and not the Deputy CEO of Z.P. as per Section 3(27) of the Bombay Village Panchayat Act, 1958.

47. From the above, it is clear that what was being asserted by Skoda was that the 2nd Appeal should not be heard by the Dy. CEO but by "Standing Committee that is Chief Executive Officer of Z.P." It was never the grievance of Skoda that the Appeal was required to be heard by all the members of the Standing Committee as is sought to be argued now.

48. The learned Counsel for the Gram Panchayat has rightly relied upon the case of [Tika Ram and Sons Ltd. etc. Vs. The Commissioner of Sales Tax U.P., Lucknow](#), and the case of [The Hindustan Construction Co. Ltd. Vs. Governor of Orissa and others](#), , wherein it has been held by the Apex Court that the Appellants voluntarily cannot take exception of the jurisdiction when the judgment has gone against him and such argument was rejected.

49. It is also pertinent to note that in the 2nd Appeal, when the application for stay which was filed by Skoda to restrain the Gram Panchayat from taking any coercive action remained pending and was not being decided, Skoda had approached this Court by filing Writ Petition No. 3137 of 2009. In the said Writ Petition it was interalia prayed that Respondent No. 8 Standing Committee decide the pending Appeal within the stipulated period and stay to the attachment notice was also sought. The Writ Petition was heard by the Division Bench of this Court and the following order

came to be passed:

Shri U.B. Bondar, learned Counsel for the Respondent No. 8 standing committee, states that the Petitioner was heard on 17/2/2009 in respect of the pending appeal and the standing committee would pass orders in accordance with law within 15 days.

We accept the aforesaid statement as an undertaking to the Court. In the light of the statement, Shri N.R.

Bhavar, the learned Counsel for the Petitioner, seeks to withdraw this writ petition and requests that since the interim order has been operating since May, 2009, the same may be continued for a period of 15 days from the decision of the appeal in order to facilitate the Petitioner for availing alternative remedies, which may be available in law for challenging the order of the standing committee, if the same is adverse to the interest of the Petitioner.

We accordingly, dismiss this petition as withdrawn and direct that at interim relief would continue for a period of 15 days from the date of communication of the decision to the Petitioner. In the circumstances, there will be no order as to costs.

(emphasis supplied)

50. On a perusal of the aforesaid order it is evident that when the matter came up before the Division Bench on 27/8/2009, Skoda did not make any grievance before the Division Bench about the hearing which was already given to Skoda. On the contrary it withdrew the Writ Petition on the statement made on behalf of the Standing Committee that since the hearing was already given; necessary orders would be passed within 15 days.

51. Significantly, though it is argued that the 2nd Appeal ought to have been heard by all members of the Standing Committee, no provisions of law or rules of Conduct of Business have been pointed out to substantiate this contention.

52. For the aforementioned reasons, I find that the contention No. 3 raised by Skoda is without substance and is therefore rejected.

53. Learned Counsel for Gram Panchayat argued that the application/revision was not maintainable before the Minister, Rural Development Department, State of Maharashtra and that in the present petition there is no prayer challenging the demand notices. However, since the petition is being dismissed, in my view, it would not be necessary to go into this aspect.

54. Except for the contentions and submissions indicated above, no other submissions have been advanced before me.

55. The upshot of the aforesaid discussion is that Skoda has not made out any case for interference or indulgence by this Court in its extraordinary writ jurisdiction under Article 226 and 227 of the Constitution of India. Consequently, the petition is

dismissed. Rule is discharged. No order as to costs.

56. It may be clarified that this order would not preclude the Govt. of Maharashtra from intervening in the disputes to bring about an amicable settlement between the Gram Panchayat and Skoda, in terms of Clause 12 of the MOU dated 13-01-2000 between the Government of Maharashtra and Skoda. This observation however would in no manner be read to mean that Skoda would be entitled to withhold or delay the payment of taxes in any manner, whether present or future.

(A.A. SAYED J)

(i) After pronouncement of the judgment, learned Counsel for the Skoda submitted that the ad-interim order granted earlier be continued for a period of 8 weeks from today. The learned Counsel for the Gram Panchayat opposed the application and submitted that the Gram Panchayat may be allowed to withdraw the amount of ` 10 lacs which was deposited by Skoda in this Court at the time of granting ad-interim relief.

(ii) Considering the submissions of the Counsel for the parties, I am inclined to continue the ad-interim order dated 27-10-2010 for a period of eight weeks from today. I am also inclined to permit the Gram Panchayat to withdraw the amount of ` 10 lacs deposited in this Court by Skoda on filing an Undertaking in this Court that the said amount will be brought back as and when directed. It is accordingly ordered