(2012) 09 AHC CK 0266

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (Tax) No''s. 1522, 1528 of 2011 and 246, 360 of 2012

M/s. Shakti Advertising and Others APPELLANT

Vs

Nagar Nigam, Varanasi and Others RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:
Uttar Pradesh Municipal Corporation Act, 1959 — Section 172, 172(2), 172(2)(h), 192, 193

Citation : (2012) 11 ADJ 533

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : W.H. Khan, J.H. Khan and Gulrez Khan, for the Appellant; Vivek Varma, Ashok Pandey and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Shri W.H. Khan, Senior Advocate assisted by Shri J.H. Khan and Shri Gulrez Khan for the petitioners. Learned Standing Counsel appears for the State respondents. Shri Vivek Varma appears for Nagar Nigam, Varanasi. In Writ Tax No. 1522 of 2011 M/s. Shakti Advertising and four others have prayed for quashing the demand notices dated 4.10.2011 (Annexures 7, 8 and 9) issued by the Tax Superintendent (Advertisement), Nagar Nigam, Varanasi raising a demand of Rs. 24, 59,923/- towards site rent, advertisement tax and renewal charges from M/s. Shakti Advertising-petitioner No. 1; Rs. 17, 18, 123/- from M/s. Allora Outdoor-petitioner No. 2; and Rs. 1, 36, 376.50 from M/s. Prisma Advertiser-petitioner No. 3. In the impugned orders the petitioners were also required to give the list of the private site hoardings.

2. In Writ Tax No. 1528 of 2011 M/s. Selvel Media Services Private Limited and 10 others have prayed for quashing the notices dated 4.10.2011 issued by the Tax Superintendent (Advertisement), Nagar Nigam, Varanasi demanding the rite rent, administrative charges, advertisement tax, and renewal fees for the year

2011-12 in respect of each of the petitioners.

3. In Writ Tax No. 246 of 2011 Origins Advertising Private Limited has challenged the notice dated 4.2.2012 issued by the Tax Superintendent (Advertisements) Nagar Nigam, Varanasi demanding Rs. 4, 61, 484.50 towards the contract for advertisement work for the year 2011-12, failing which the firm may be blacklisted and the amount be realised as arrears of land revenue. The petitioner has also been asked to pull down the advertisements from the private sites. In this writ petition the petitioner has also challenged the resolution of the Nagar Nigam, by which a proposal for increasing the site rent and for allotment of the sites for the year 2012-13 by auction/tender was approved by Circular with stipulation, that the resolution will be put up for approval in the next meeting of the Executive Committee. The petitioner has also prayed for directing the respondents to grant renewal to the petitioner on its application dated 9.3.2011 and for restraining them from demolishing/damaging/removing the petitioner''s hoardings/advertisements.

4. In Writ Tax No. 360 of 2012 M/s. Ellora Outdoor, a proprietorship firm represented by Shri Dinesh Kumar Yadav and five others have prayed for directions to quash the advertisement dated 16.3.2012 published by Nagar Nigam, Varanasi for conducting auction of the advertisement sites for the year 2012-13 on 27.3.2012 and the resolution of the Nagar Nigam dated 30.9.2011 increasing the site rent. They have also prayed for directing the respondents to grant renewal for the year 2012-13 and not to remove and demolish the petitioners'' hoardings on Nagar Nigam sites/private sites. By amendment applications filed in Writ Tax No. 360 of 2012 the petitioners have prayed for quashing the order dated 17.4.2012 and the Government Order dated 5.4.2012. All the amendment applications are allowed.

5. The petitioners are proprietorship and partnership firms displaying advertisements on hoardings, glow-poles, kiosks poles, dividers and other sites fixed by the Nagar Nigam of various sizes. The petitioners are also engaged in the business of displaying advertisements on private sites after entering into contract with the owners of the sites, subject to supervision and control by the Nagar Nigam, Varanasi.

6. By a Gazette Notification dated 26.7.1969 issued under sub-section (2) of Section 203 of the Uttar Pradesh Municipal Corporation Act, 1959, the Nagar Palika, Varanasi, in exercise of the powers conferred on it by clause (h) of subsection (2) of Section 172, notified imposition of taxes on advertisements, not being advertisements published in newspapers, which are erected, exhibited, fixed, displayed or retained upon or over any land/building, wall, hoarding or structure, whether public or private, within the City of Varanasi, by any person. The notification provided for rates for various types of advertisements both on per month and per year basis. The rates were prescribed according to the sizes of the advertisements. The Explanation (1) appended to the notification provided that in calculating the space or area referred to above all the faces of the

advertisement hoardings, boards, etc. utilized for purposes of display shall be taken into account, provided that in case of a sky-signs, in addition to the above the face surface of the supporting pillars or raised platforms, if any below the actual displaying area shall also be taken into account. Explanation (2) appended to the notification provided that an advertisement shall not be deemed to be an illuminated advertisement within the meaning of this Schedule if such advertisement is illuminated merely by lighting which is in the opinion of the Mukhya Nagar Adhikari not more than what is necessary to make the same visible at night. The notification dated 26.7.1969 issued u/s 172(2)(h) came into effect from 1.8.1969. The notification is not under challenge in any of these writ petitions.

7. The petitioners were awarded contracts of various sites for advertisement in the year 2011-12. The period of their contract came to an end on 31.3.2012.

8. The State Government made and notified the Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009, to be applicable in respect of all the Municipal Corporations in the State of U.P. prescribing rates for advertisement tax. In Anurag Bansal and Others Vs. State of U.P. and Others, , a Full Bench of this Court declared the Rules of 2009 to be ultra vires to the provisions of the Act on the ground that the procedure prescribed for levying taxes by the Municipal Corporation was not followed. The proposals were approved by the Nagar Nigam after inviting objections. Since no new Rules have been framed for imposition of the advertisement tax, the Nagar Nigam, Varanasi resumed realisation of advertisement tax on the basis of the previous Gazette notification dated 26.7.1969, registering sharp decline in the income from the collections on the old rates. To compensate and augment the revenue the Nagar Nigam resolved by resolution passed by the Executive Committee of the Nagar Nigam as approved by the Mayor, Nagar Nigam, Varanasi on 30.9.2011 to increase the site rent from Rs. 50/- square ft to Rs. 125/- square ft, and the administrative charges from Rs. 12.50 square ft to Rs. 50/- square ft., w.e.f. 1.4.2011.

9. In the counter-affidavit of Shri Atul Kumar, Tax Superintendent, Nagar Nigam, Varanasi, it is stated in paragraph-5 that the resolution dated 30.9.2011 will be placed in the next meeting of the Executive Committee, and that after 30.9.2011 no meeting of the Executive Committee has been held till date i.e. 29.3.2012 when the counter-affidavit was filed.

10. The Nagar Nigam, Varanasi had resolved in its meeting dated 16.3.2007 to impose renewal fee for renewing the contracts of advertisement, which is. still in force.

11. The petitioners were in arrears of the advertisement tax as notified by notification dated 26.7.1969, and other charges for the year 2011-12. The Nagar Nigam, Varanasi issued notices on 4.10.2011 demanding the arrears of the site rent, administrative charges, advertisement tax and renewal fees and also to

give the details of the property site hoardings, giving rise to this writ petition.

12. In Writ Tax No. 1522 of 2011 this Court passed following orders on 17.10.2011:

Sri Vivek Verma has accepted notice on behalf of respondent Nos. 1 to 4. Learned Standing Counsel appears for respondent No. 5. All the respondents will file counter-affidavit within three weeks. The petitioners shall file rejoinder-affidavit within a week thereafter.

List on 22.11.2011.

The petitioners are doing business in advertisement. It is stated that there is also an Association of advertisers at Varanasi, namely, Purvanchal Advertising Association, Varanasi, to look after the interests of the members of the association. However, this writ petition has been filed individually.

The petitioners have erected hoardings, on which they have put up advertisements on various sites in Varanasi. These sites, include the Nigam Site, KIOSKs, private sites and also sites on Railway land. The petitioners were paying the site rent in respect of the sites of Nagar Nigam, and advertisement tax in respect of the sites owned by Nagar Nigam, under the Rules as they were amended in 2009. For the private site hoardings, site rent was not paid and only administrative charges and advertisement tax was paid.

It is not denied that the permission to put up all the advertisements on the sites owned by the Nagar Nigam, the Railways and private sites, including KIOSKs, has expired on 31.3.2011 and since thereafter, the site rent, administrative charges and advertisement tax, as the case may be, has not been paid.

This writ petition is directed against the demand notice dated 4.10.2011 for Rs. 24,59,923/- on the enhanced rates of site rent and administrative charges, both on sites owned by Nagar Nigam/Railways, and private sites.

Sri W.H. Khan, learned counsel for the petitioner, submits that so far as the advertisement tax is concerned, the U.P. Municipal Corporation (Assessment and Collection of Tax on Advertisement) Rules, 2009, has been set aside by Full Bench of this Court in Anurag Bansal and Others Vs. State of U.P. and Others, , and thus the petitioner is not liable to pay advertisement tax, unless the writ petitions are made after complying with the provisions of Sections 199 and 203 of the Municipal Corporation Act, 1959.

Sri Khan further submits that the increase of the site rent and administrative charge is highly excessive, arbitrary and unreasonable, in as much as these increases have been made applicable retrospectively, by resolution passed on 30.9.2011. The increase cannot be made retrospectively. u/s 193(3), if the advertisement tax is paid, the Municipal Commissioner shall grant permission for the period to which the payment of tax relate, and no fee shall be charged in respect to the said permission.

Sri Vivek Verma, learned counsel for the respondent states that the hoardings have been put up in Nagar Nigam land. The petitioners have no right to continue the hoardings unless permission is given. It is open to the Nagar Nigam, to auction the site for advertisement for augmenting its income, especially when the 2009 Rules has been set aside by this Court.

Prima facie, we find justification only to the effect that the rate of site rent and administrative charges could not be increased retrospectively w.e.f. 1.4.2011 to 30.9.2011. The petitioners however do not have any right whatsoever to put up hoardings on Nagar Nigam land unless fresh permission is granted. We also do not find any substance in the contention that since there are no rules or bye-laws for putting up hoardings and auction, the petitioners have a right to continue with their hoardings and put up advertisements so long as they continue to pay the advertisement tax as per the old rates.

The petitioners do not have any right to put the hoardings and advertisements on the sites which belong to Nagar Nigam. It is always open to the Nagar Nigam to auction these sites for the purpose of establishing structures on the specified sites for putting up advertisements.

We are surprised that neither Nagar Nigam, Varanasi nor any other Nagar Nigam in the State, has made any bye-laws governing the manner and specifications of putting advertisements. The municipal authorities should not allow advertisements are put up haphazardly, without any policy to put up structures, sizes and symmetry which advertisements should be displayed.

As an interim measure, we direct that the Nagar Nigam, Varanasi will not realize the enhanced rent of site rent and administrative charges for the period 1.4.2011 to 30.9.2011. So far as the right of the petitioners or any other firm to install structures and put up advertisements on public land, including Nagar Nigam land and Railway land is concerned, it will be open to the public authorities to pull down the structures, and not allow any structures to be put up until fresh rights are settled by way of auction. The petitioner will pull down all structures and advertisements on Nigam Sites, public land and Railway land, within a week from today. They will also pay the enhanced lease rent and administrative charges w.e.f. 1.10.2011, on private sites.

13. The petitioners did not yet pull down the advertisements on the sites of Nagar Nigam, public land, railway land and on private properties. They have also not cleared the arrears of enhanced site rent, administrative charges, advertisement tax and renewal charges, even after availing the entire period of contract, which ended on 31.3.2012.

14. In pursuance to the advertisements issued by the Nagar Nigam, the petitioners submitted their tenders/offers on 27.3.2012. Before the tenders could be accepted by the Nagar Nigam, the State Government by a Government Order dated 30.3.2012 informed all the Nagar Nigams not to auction the advertisement sites and to offer them by negotiations. Before the negotiations could begin, the

State Government by its order dated 5.4.2012 decided to revert back to the policy of auctioning the sites.

15. In Writ Tax No. 360 of 2012 this Court passed an order on 3.4.2012 directing that in case the petitioners make an application for renewal of the sites within three days, the same shall be considered and appropriate decision will be taken regarding grant of permission/conditions within a period of seven days thereafter, and till the applications are decided, the petitioners'' hoardings shall not be removed. The Court, however, made it clear that after the applications are decided, the petitioners shall immediately remove their hoardings, failing which the Nagar nigam will take appropriate steps.

16. The Nagar Nigam by its order dated 17.4.2012 decided the representations filed by the petitioners. In the order passed by the Incharge Municipal Commissioner, he observed that M/s. Shakti Advertising; M/s. Kashi Advertising Services and M/s. R.K. Publicity (the petitioners in Writ Tax No. 360/2012) participated in the tender process on 27.3.2012, and they were found to be the highest tenderers for 215 sites detailed in the order. Since the State Government had stopped the finalisation of the tenders by Government Order dated 30.3.2012, the process of tenders was stopped. Subsequently by the Government Order dated 5.4.2012 the order dated 30.3.2012 was recalled and the Nagar Nigams were directed to invite tenders and to settle contracts with the highest bidders. So far as private sites are concerned, it was observed in the order dated 17.4.2012 that without the permission of the Municipal Commissioner under Sections 192 and 193 of the Act, no person can display advertisements on private sites. The Nagar Nigam takes decision for displaying advertisements on private sites after examining and considering the merit of each sites. The Nagar Nigam decides the sizes of the advertisements to be permitted on the private sites. By the same order the Incharge Municipal Commissioner directed the petitioners to remove their hoardings, glow-poles, and kiosks poles in compliance with the order of the High Court dated 17.10.2011 and to pay the required charges for the period upto April, 2012.

17. The Nagar Nigam again published advertisement inviting tenders for contracts for advertisements. The tenders were opened on 11.5.2012. All those persons, who had participated in the tender process on 27.3.2012, were also required to participate. Their tenders were also considered. The Tax Superintendent (Advertisement), Nagar Nigam found that the offers given by the petitioners are much less than the revenue earned in the previous year, and thus an offer was given to the petitioners to increase their offers, by 5% excluding the advertisement tax of the previous years.

18. Now in these writ petitions the petitioners have changed their stand. They have amended the writ petitions to challenge the increase in the rates of administrative charges, and renewal charges on the ground that these charges amount to tax which the Nagar Nigam is not authorised to charge. They have prayed for quashing the orders dated 5.6.2012, whereby the Nagar Nigam has

granted permission to install hoardings on private sites on payment of administrative charges and renewal charges and for quashing the orders dated 6.8.2012, by which the petitioners have been informed that if they do not deposit the amount demanded by the letters dated 5.6.2012, they will be blacklisted and their hoardings will be removed and appropriate orders will be passed in pursuance to the Court''s order dated 3.4.2012. The petitioners have also challenged by an amendment application in Writ Tax No. 360 of 2012 the demand of administrative charges and renewal charges through letters dated 5.6.2012, 19.6.2012 and 7.8.2012.

19. In the course of hearing the petitioners were repeatedly asked to give number of sites, which have been settled with them. Though they have filed six amendment applications, they did not disclose the number of sites, which have been settled with them. M/s. Shakti Advertising; M/s. Kashi Advertising Services and M/s. R.K. Publicity had submitted their tenders for 215 Nagar Nigam sites on 27.3.2012.

20. Shri Vivek Verma, learned counsel appearing for the petitioners submits that in the subsequent tender process after the State Government revised the policy, back to inviting tenders, the tenders were submitted on 11.5.2012 in which 14 sites of Nagar Nigam for hoardings, and 151 sites of Nagar Nigam for kiosks have been settled with M/s. Shakti Advertisement; 28 sites of Nagar Nigam for hoardings with Kashi Advertise Services, and 06 Nagar Nigam hoardings sites have been settled with M/s. R.K. Publicity.These petitioners thus tendered and were successful with large number of Nagar Nigam sites, out of total number of 119 sites for hoardings, 151 sites for kiosks on electric poles and 504 sites for glo-poles on kiosks and on dividers.

21. Shri W.H. Khan appearing for the petitioners has now challenged the demand notices given to the petitioners for the year 2011-2012, and levy and increase in the administrative charges and renewal charges. It is submitted by him that when the sites were reserved for petitioners on their submitting the tenders on 27.3.2012, and their rates were disclosed, the re-auctioning of the sites by inviting fresh tenders on the increased rates of administrative charges was illegal and arbitrary. He submits that there is no legal sanction for renewal charges and thus the demand of the old bills to the settlement of the sites for the year 2012-13 and renewal charges are liable to be set aside. He also submits that on private sites, the Nagar Nigam has no right to object and to impose any charges including administrative charges and renewal charges as the Nagar Nigam does not provide any services for advertisements on private sites. He has relied upon the The Corporation of Calcutta Vs. Anil Prokash Basu, , in which it was held that the income from advertisements by placing hoardings on the roof of the building accrued to the owner of the building, who permits a person to put up advertisement as a licencee, cannot be added in the annual value of the building for the purposes of municipal taxation. He has also relied upon Links Advertisers and Business Promoters Vs. Commissioner, Corporation of The City of

Bangalore, , in which the Supreme Court considered the argument that the hoardings put up on railway sites at sufficient height, fencing the members of the public passing through the street, with clear visibility exposing the advertisement to public use would not cover it by the exemption contemplated by the proviso and are, therefore, exigible to tax. The demand notice was not erroneous inasmuch as exigibility to tax is relatable not to the ownership of the hoardings but its sites. We are unable to appreciate as to how these decisions, which are in favour of the respondents, would help the petitioners in support of their arguments.

22. Shri W.H. Khan has relied upon Gupta Modern Breweries Vs. State of Jammu and Kashmir and Others, ; Commissioner of Central Excise, Lucknow, U.P. Vs. Chhata Sugar Co. Ltd., ; Triveni Engineering and Industries Ltd. and Another Vs. State of U.P. and Another, ; Calcutta Municipal Corporation and Others Vs. Shrey Mercantile Pvt. Ltd. and Others, to support his submission, that the Nagar Nigam, Varanasi is not legally authorised to levy administrative charges and renewal fees. These charges do not have any sanction of law and are highly excessive and arbitrary.

23. Shri W.H. Khan has also cited Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, ; Bharti Airtel Ltd. v. State of U.P. and others, (Writ Petition No. 7848 of 2010 (MB) decided on 21.10.2010); Pepsi Company India Holdings Put v. State of Uttrakhand, decided by Uttrakhand High Court on 2.6.2010; Kishore Gupta Vs. Municipal Corporation, Indore and Another, ; Indore Bhed-Bakra Vikreta Sangh and Others Vs. The Municipal Corporation and Others, . In all these judgments the Supreme Court and various High Courts have considered the levy of fees by the Municipal Corporations and its increase.

24. Shri Vivek Varma appearing for Nagar Nigam submits that in Anurag Bansal v. State of U.P. and others (supra) a Full Bench of this Court considered the provisions of Sections 172 and 196 of the U.P. Municipal Corporations Act and held that these provisions should be read conjointly and not in isolation. Section 172(2) of the Act empowers the Corporation to impose tax in addition to taxes specified in sub-section (1). These powers are similar to the powers of taxation as clarified in Section 172(2). Meaning thereby, that the power of the State Government to impose tax under List II of Schedule VII of the Constitution of India is available to the Corporations. Section 192 confers additional power to the Corporation empowering it to impose tax on the advertisement. Section 193 provides that without written permission of the Municipal Commissioner, no advertisement shall be exhibited. In case the advertisement contravenes any bye-law made by the Corporation under clause (48) of Section 541, no permission shall be granted. The permission shall be granted only for the period for which the tax is paid. Section 195 provides that it is the beneficiary of the advertisement which shall be responsible for facing punitive action in the event of contravention of provision of bye-laws with regard to the advertisement-. Under clause (v) of Rule 5, the owner of the land or building has been held to be

responsible for any default and liable to pay taxes. This is contrary to the provisions of Section 195 of the Act. The building owners may receive rent but actual beneficiary of the advertisement is the company or the person, who advertises its goods. It is for the advertising agency to ensure compliance of rules and the bye-laws.

25. In Anurag Bansal v. State of U.P. and others (supra) the Full Bench held that the Rules could not be framed by the Government in the manner as it is done. At the most the proposed rule or the modern rule could have been sanctioned to the Corporation and it was for the Corporation to consider the proposal of the State Government in pursuance to the powers conferred u/s 202 of the Act and thereupon the Corporation could have directed for imposition of tax. In the event of failure on the part of the Corporation the Government has option to take recourse to the powers conferred under Sections 205 and 206 of the Act. The Government could not have framed the rules for all Municipal Corporations without taking recourse of not only Section 206 of the Act but other statutory provisions contained in Chapter IX of the Act.

26. It is submitted by Shri Vivek Verma that the Rules of 2009 were declared ultra vires as they did not follow the provisions of Sections 199 to 203 of the Act. The Court also held the provisions in the Rules of 2009 requiring the owner of the building to face penal consequence as invalid and violative of Section 195 of the Act. With the declaration of the Rules of 2009 as ultra vires the provisions of the Act, in so far as allowing the advertisement on Nagar Nigam sites and private sites on old rates vide Gazette notification dated 26.7.1969 revived. The advertisement tax is being imposed at the rates notified in the Gazette notification dated 26.7.1969, which was not challenged.

27. So far as administrative charges and renewal charges is concerned, it is submitted by Shri Vivek Varma that the Nagar Nigam is competent to levy these charges for supervision of the advertisement on Nagar Nigam sites. The renewal fee is payable where the advertiser applies for renewal of the advertisement sites.

28. We find substance in the contention of Shri Vivek Varma, that with the sharp decline in the income of the Nagar Nigam from advertisement tax, and the increase in the amount realised by the advertising firms from the companies, the Nagar Nigam was entitled to charge increased site rent and administrative charges for supervision of various kinds of advertisements being put on Nagar Nigam sites.

29. The Nagar Nigam was also entitled to charge advertisement tax at the old rates notified on 26.7.1969, which were not challenged and have been charged consistently since thereafter, and also administrative charges as these charges are being levied to supervise hundreds of sites, which are settled by the Nagar Nigam with private persons.

30. The administrative charges levied by the Nagar Nigam for supervision of the advertisements and its increase has been sanctioned by the Nagar Nigam vide

resolution dated 30.9.2011. The petitioners have not placed any such material before the Court that the Nagar Nigam is not supervising the advertisement and that the amount collected by way of advertisement charges are so excessive that there is no co-relationship between the levy and cost of supervision incurred by the Nagar Nigam. The levy of administrative charges in the present case is not to render any services but to incur the cost of supervision of the advertisements, which include the cost of ensuring that the advertisements do not violate any of the conditions namely the place, size of the advertisements, the symmetry and aesthetics of the advertisements and that such advertisements are restricted to the number for which the permission is granted and do not obstruct public view and are consistent with decency and morality. The administrative charges in the present case cannot be treated as fees for return of any services rendered, so as to examine whether there is any quid-pro-quo between the fees charged and the services rendered. The administrative charges are not recurring in nature nor are shown to be charged more than once towards the cost of supervision.

31. So far as renewal fees is concerned, we find that a specific stand has been taken by the Nagar Nigam that there is no provision of renewal of the advertisements on the sites offered by the Nagar Nigam for advertisement. The advertisements are settled each year by auction. The Nagar Nigam has not demonstrated as to how in the absence of any policy of renewal, the renewal fee is being charged and the authority under which the renewal fee is being levied.

32. The petitioners submitted their tenders for the Nagar Nigam sites on 27.3.2012, and thereafter after the revival of the policy by the State Government for auctioning the advertisement sites, fresh tenders were submitted on 11.5.2012. The petitioners have been awarded contracts for large number of sites of hoardings, kiosks poles, and advertisements on dividers. They offered their rates for advertisement with open eyes and competed with others. There is absolutely no justification for them now to challenge the rates on which the advertising sites have been settled with them and the administrative charges for which they have agreed to enter into agreements with Nagar Nigam.

33. In Origins Advertising Private Limited v. State of U.P. and others, Civil Misc. Writ Petition No. 154 of 2012 decided on 1.6.2012 this Court has not interfered with the agreement to pay advertisement tax as per agreement arrived at between the petitioner and the Nagar Nigam, Kanpur Nagar as there was a mutual agreement entered into between the petitioner and the Nagar Nigam, Kanpur Nagar. The Court was also of the view that even if the draft Rules of Advertisement Tax, 2002, which were followed by the Rules of 2009 were set aside, once there was an agreement to pay advertisement tax, the petitioner could not be relieved of the liability to pay the amount under the contract on the principles of unjust and enrichment as the petitioner has charged the companies advertising their product on the increased rates. On the same principles of law we also do not propose to interfere in the matter both with regard to the contracts which the petitioner had entered into with Nagar Nigam, Varanasi for

the year 2011-12, and on the increased rates for the year 2012-13.

34. The writ petitions are partly allowed only to the extent that the Nagar Nigam, Varanasi is restrained from charging renewal fees as it has no policy of renewal, nor there is any statutory provisions, or rules or bye-laws to charge renewal fees. For the remaining prayers the petitioners are not entitled to any relief.

35. Before parting with the case, we may observe that the petitioners have not pulled down their advertisements displayed on the Nagar Nigam''s sites, which have not been settled with them for the year 201.2-13. They have involved the Nagar Nigam, Varanasi into unnecessary and avoidable litigation. In the interim order dated 17.10.2011, we had only restrained the Nagar Nigam to increase the site rent and administrative charges retrospectively, and that had made it open to the public authorities to pull down the structures and not to allow any structures to be put up until fresh rights are settled by way of auction. We are informed that the petitioners did not pull down the structures and advertisements on Nagar Nigam sites, public land and railway land. In these writ petitions no relief has been claimed nor any argument has been raised and pressed with regard to the increase of administrative charges w.e.f. 1.4.2011 to 30.9.2011, and thus it will be open to Nagar Nigam to realise the entire arrears from the petitioners for the period upto 31.3.2012. The Nagar Nigam will pull down all the structures and advertisements, which have not been settled with the petitioners, within a week from today. It will be open to the Nagar Nigam to calculate and realise the advertisement tax on the rates in the Notification dated 26.7.1969, site rent, administrative charges on contract for advertisements on Nagar Nigam sites, public land and railway land from which the advertisements are made visible on public street maintained by the Nagar Nigam for the entire period, on the sites which are not settled with petitioners upto the date these structures are pulled down, as well as the cost of pulling down the advertisement. For these sites which have been settled with them the Nagar Nigam, Varanasi will realise the taxes, rent and administrative charges etc. for the entire financial year, at the rates on which these sites are settled with them. For private sites the Nagar Nigam will follow its existing policy.

