

(1987) 12 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 19337 and 19389 of 1986

Nagar Mahapalika Gorakhpur

APPELLANT

Vs

II Additional District Judge and Others

RESPONDENT

Date of Decision : 07-12-1987

Acts Referred:

Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 12, 141, 19, 226, 285
Contract Act, 1872 — Section 72
Uttar Pradesh Local Urban Self-Government Laws (Amendment) Act, 1987 — Section 13, 18(2), 3(4), 6
Uttar Pradesh Municipalities Act, 1916 — Section 128(1), 338, 338(1), 338(2), 579
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 2(2), 201, 209, 219, 3
Uttar Pradesh Urban Local Self Government Laws (Second Amendment) Act, 1979 — Section 4

Citation : (1988) 1 AWC 513

Hon'ble Judges : S.K. Dhaon, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Dhaon, J.—This and the companion writ petition No. 18389 of 1986 arise out of the same judgment, they involve identical controversy and, therefore, can be conveniently disposed of by a common judgment.

2. The material facts in brief are these. On or before 16th November, 1981, the Municipal Board Gorakhpur was in existence. This Board was levying and realising octroi. On or before 7th April, 1979, there was in existence the Notified Area Committee Gorakhpur (hereinafter referred to as the Notified Area) within the "local limits of which the Fertilizer Corporation of India (hereinafter referred to as the Corporation) carried on commercial activities. The Notified Area had levied octroi and the same was being realised from the Corporation. On 7th April, 1979, the Governor of Uttar Pradesh had promulgated the U.P. Urban Local Self-Government Laws (Amendment) Ordinance, 1979 (U.P. Ordinance No. 6 of

1979) which was replaced by the Uttar Pradesh Urban Local Self-Government Laws (Second Amendment) Act, 1979 (U.P. Act No. 17 of 1979) (hereinafter referred to as the Act of 1979). By the Ordinance as well as by the Act the power of the Notified Areas and the Town Areas in the State to levy toll and octroi was taken away. The two taxes which were imposed by the aforesaid local bodies were abolished with effect from 7th April, 1979. On 16th November, 1981, a notification purporting to be u/s 3(1) of the U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter referred to as the Adhiniyam) was issued whereby the area lying within the limits of the Municipal Board, Gorakhpur was constituted in a city and the city was nomenclatured as the Nagar Mahapalika, Gorakhpur (hereinafter referred to as the Mahapalika) in accordance with the provisions of Section 4 of the Adhiniyam. On 15th June, 1982, the State Government by a notification purported to have been issued under Sub-section (2) of Section 3 of the Adhiniyam altered the limits of the city (Gorakhpur) so as to include therein the area under the jurisdiction of the Notified Area. Thus the said area came into the jurisdiction of the Mahapalika. The Corporation paid and the Notified Area received from it a sum of Rs. 2,19,192.08 p. after 7th April, 1979 and before 14th June, 1982 as octroi. After 15th June, 1982, and till 22nd December, 1982, the Mahapalika realised a sum of Rs. 4,78,384.82 p. as octroi from the Corporation. The Mahapalika persisted in realising octroi from the Corporation subsequent to 15th June, 1982. The Corporation on 14th February, 1983, sent a communication No. GP/Legal/37 to the Administrator of the Mahapalika praying that the sum of Rs. 2,19,792.08 p. may be refunded to it. On the same date, it made a similar representation No. GP/Legal/36 to the Administrator praying that the sum of Rs. 4,78,384.82 p. may be refunded to it and the Mahapalika should desist from realising any octroi from it. By a communication dated 18th March, 1982, the Administrator rejected both the objections. Feeling aggrieved, the Corporation preferred two separate appeals u/s 472 of the Adhiniyam which were registered as Appeals No. 1 and 2 of 1983. In Appeal No. 1 of 1983 the prayers, inter alia, were that the Mahapalika may be permanently restrained from realising or recovering any octroi, and decree for a refund of Rs. 4,78,382.82 may be passed and a permanent injunction be issued directing the Mahapalika to refund the octroi realised after 15th June, 1982. In Appeal No. 2 of 1983, the prayers, inter alia, were that the Mahapalika may be restrained from recovering any outstanding of the octroi for the period beginning from 7th April, 1979 and ending on 14th June, 1982 and a decree for a sum of Rs. 2,19,792.08 p. may be passed. These two appeals were disposed of by the II Civil Judge, Gorakhpur on 30th August, 1983, by a common judgment and the Corporation obtained the reliefs as prayed. The Mahapalika preferred two separate appeals No. 336 and 337 of 1983 against the said judgment of the II Civil Judge. These appeals were dismissed by a common judgment dated 4th October, 1986, by the II Additional District Judge. However, the Additional District Judge allowed the cross-objections preferred by the Corporation and restrained the Mahapalika, its employees and servants from detaining the trucks and vehicles of the Corporation with material thereon, from imposing any octroi on the goods

brought to the Corporation till the Union Parliament enacted any law permitting the Mahapalika to impose and recover octroi. Hence the two writ petitions before this Court.

3. Chapter XXV of the Adhiniyam provides for transitory provisions, repeals and amendments. Section 577 (a), which falls in this Chapter, provides that save as expressly provided by the provisions of the said Chapter or by a notification issued u/s 579, any tax imposed under the Municipalities Act, 1916 or any other law in force in any local area constituted to be a City immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of the Adhiniyam, continue in force until it is superseded.....under, the Adhiniyam. Sub-section (2) of Section 2 says that "appointed date" with reference to a City means the date on which the due constitution of the Mahapalika for the City is notified in the official Gazette. Section 172 of the Adhiniyam authorises the Mahapalika to impose amongst other taxes an octroi on goods or animals brought within the City for consumption, use or sale therein. I have already indicated that prior to 16 November, 1981, the appointed date, so far as the instant case is concerned, the Municipal Board, GoraUipur was realising octroi. As indicated, the Adhiniyam authorises the Mahapalika to impose octroi. Therefore, by the force of the provisions contained in Section 577 (a) the Mahapalika became entitled to realise octroi as was done hitherto by the Municipal Board. Gorakhpur, there being no inconsistency between the U.P. Municipalities Act, 1916 and the Adhiniyam so far as the imposition and realisation of the said tax was concerned. It follows that the Mahapalika was entitled to impose and realise octroi with effect from 16th November, 1981 in the area which was under the jurisdiction of the Municipal Board Gorakhpur and it can continue to do so till a change is effected in accordance with law.

4. Sub-section (2) of Section 3 of the Adhiniyam provides that the State Government may from time to time by notification in the official Gazette alter the limits specified for any City under Sub-section (1) so as to include therein or to exclude therefrom, such area as may be specified. As already indicated, by virtue of a notification issued on 15th June, 1982 under the said provision the area which fell in the jurisdiction of the Notified Area was brought under the jurisdiction of the Mahapalika. By Section 6 of the U.P. Urban Local Self-Government Laws (Amendment) Act, 1987 (U.P. Act No. 3 of 1987) (hereinafter referred to as the Act of 1987) Sub-section (4) to Section 3 of the Adhiniyam was inserted. It will be profitable to extract Section 6 of the Act of 1987:

6. In Section 3 of the principal Act, after Sub-section (3), the following Sub-section shall be and shall always be deemed to have been inserted, namely:

(4) Whereby reason of a notification under Sub-section (2), any area is included in a city constituted under Sub-section (1), such area shall thereby become subject to all notifications, rules, regulations, bye-laws, orders, directions issued or made under this or any other enactment and in force in the City at the time immediately preceding the inclusion of such area, and all taxes, fees and charges

imposed under this Act, shall be and continue to be levied and collected in the aforesaid area.

A plain reading of Sub-section (4) indicates that an area included in a City shall be subject to all notifications, rules, regulations, bye-laws, orders, directions issued or made under any enactment and enforced in the City at the time immediately preceding the inclusion of such area and all taxes, fees and charges imposed under the Adhiniyam shall be and continued to be levied and collected in the area so included. Applying the Sub-section to the present case, the conclusion is inevitable that taxes etc. which were being levied and realised by the Mahapalika can be levied and realised in the area which was immediately before 15th June, 1982, under the jurisdiction of the Notified Area. In other words, without more, octroi could be imposed and realised by the Mahapalika from the newly added area to its jurisdiction and this activity could commence from 15th June, 1982 and go on till a change is brought about.

5. Sri Jagdish Swamp, the learned Counsel for the Corporation, has contended that Sub-section (4) will apply to an area where under the law octroi could be levied but was not being levied and also to an area where law did not permit the levy of octroi. It will have- no application where the imposition of octroi has been abolished. The provisions of Clauses (a) and (b) of Sub-section (2) to Section 338 of the U.P. Municipalities Act, 1916, as they stood on or before 7th April, 1979 are relevant. In Clause (a) to Sub-section (1) the State Government is empowered to apply or adopt to a Notified Area the provisions of all or any of the Section of the said Act, or of any Act, which may be applied to a Municipality or a" part subject to such restrictions and modifications. In Clause (b) the State Government is empowered to impose in the whole or part of such area any tax which might be imposed therein under the provisions of the said Act or of any other Act, if the said area were a Municipality. Clause (viii) to Sub-section (1) of Section 128 of the U.P. Municipalities Act permitted the imposition of octroi. By the Act of 1979 amongst other provisions Clause (b) in Section 338(1) had been substituted to the effect that the notified area was authorised to impose all the taxes mentioned in Section 128(1) of the U.P. Municipalities Act except toll and octroi. Section 4 of the Act of 1979 may be extracted:

4. Abolition of certain taxes.-Notwithstanding anything contained in any other law for the time being in force, where as a consequence of the amendments made by this Act in the U.P. Municipalities Act, 1916 and U.P. Town Areas Act, 1914 the power to impose any tax (which term includes a toll and octroi) has been taken away, any such tax imposed prior to commencement of this Act, in respect of the whole or part of a municipality, notified area or town area shall on the commencement of this Act stand abolished, without prejudice to the liability in respect of such tax incurred prior to such commencement.

6. A combined reading of the substituted Clause (b) in Sub-section (1) of Section 338 and Section 4 goes to show that the power hitherto vested in the Notified Area to impose octroi had been taken away and as a consequence of the

deprivation of the power the octroi imposed prior to the commencement of the Act of 1979 in the Notified Area stood abolished on the date of the commencement of the Act of 1979. In other words, as a consequence of the Act of 1979, the Notified Area ceased to have any power to impose and realise octroi and such a tax stood abolished within the limits of the notified area. By a mere substitution in Clause (b) of Sub-section (1) of Section 338 the existing octroi could not be abolished and that is why the Legislature in Section 4 made it clear that apart from depriving the Notified Area of its power to impose octroi, such taxes stood abolished. The result was that no octroi existed within the area under the jurisdiction of the Notified Area from a certain date. The abolition of the tax had, therefore, an impact only on the area which was within the jurisdiction of the notified area. The effect of the abolition upon the area could last so long as the area remained within the jurisdiction of the Notified Area. The moment the area ceased to be a part of the Notified Area, the provisions of Section 4 of the Act of 1979 ceased to operate upon it. Section 4 ceased to apply to that area the moment it became a part of the Mahapalika and became subject to the taxes which could be lawfully imposed by the Mahapalika in future or which were being lawfully imposed by the Mahapalika in presenti. Therefore, the Corporation cannot take any advantage of the fact that the octroi stood abolished on the date when the notification under Sub-section (2) of Section 3 of the Adhiniyam was - issued adding the area, which was within the jurisdiction of the Notified area, to the jurisdiction of the Mahapalika.

7. In principle it made no difference whether the octroi was not being levied, could not be levied and had been abolished after being imposed. The practical effect was the same, namely, no such tax was in existence on 1st June, 1982, when the notification under Sub-section (2) of Section 3 of the Adhiniyam was issued. Sub-section (4) of Section 3 of the Adhiniyam, as inserted by Act of 1987, will have its full play even in a case where the octroi had been levied in an area but had been abolished on the date when the notification under Sub-section (2) of Section 3 was issued whereby that area was included in the City constituted under Sub-section (1). The consequences enumerated in Sub-section (4) flow from the moment an area is included in a City by reason of a notification under Sub-section (2). Nothing more is required. The conclusion, therefore, is inevitable that the factor that the octroi had been abolished prior to the issue of the notification under Sub-section (2) will have no relevance for the levy and realisation of such a tax by the Mahapalika if the conditions enumerated in Sub-section (4) are fulfilled. The language used by the Legislature in Sub-section (4) is clear and unequivocal. It abhors the exception sought to be carved out by the learned Counsel.

8. Learned Counsel next contended that, in any event, the Mahapalika could realise the octroi from the Corporation only on or after 5th October, 1983, when the Rules changing octroi limits and showing the octroi area were enforced. Therefore, the Mahapalika was liable to refund the tax realised by it from the Corporation between the period commencing from 15th June, 1982 and ending

on 4th October, 1983. This submission in my opinion, stands answered by Sub-section (4) to Section 3 which has been inserted by the Act No. 3 of 1987 with retrospective operation. The retrospectivity has been given, as already shown, by a deeming provision. The fiction, therefore, has to be taken to its logical conclusion. The enforcement and the working of the provisions of Sub-section (4) could neither be arrested nor stifled by the fact that the Rules fixing the octroi limits had not been altered.

9. In *Bagalkot City Municipality Vs. Bagalkot Cement Co.*, the Supreme Court speaking through Sarkar, J., in a majority judgment held that before the applicability of a pre-existing tax in the newly added areas of the municipality is upheld, it must be referable to some provision in the statute. His Lordship observed:

... Let us however assume that it was intended that the existing bye-laws would apply to the added areas without fresh re-enactment. If such was the intention, that intention must necessarily be referable to some provision of the Act. In such a case it would be because of that provision of the Act that the bye-laws would be affecting people to whom they had not before their making been published and not by their own terms or force....

The minority view expressed through Raghubar Dayal, J. was that the consequence of the alteration of the limits of the Municipal Board is that the area newly added to the municipal limits comes not only under the control of the municipality but also becomes subject to such laws, rules and bye-laws which may be in force within the municipal limits. Sub-section (4) of Section 3 of the Adhiniyam is the provision in the Adhiniyam which meets the requirements of "some provision in the Act" referred to in the majority judgment aforequoted. Therefore, Sub-section (4) is a complete answer not only to the submission that the provisions of the said Sub-section will have no application as in the notified area octroi had been abolished; but also to the submission that in the absence of an alteration or amendment in the octroi Rules the Mahapalika had no jurisdiction to impose and realise octroi from the area added to the limits of the Mahapalika.

10. Section 172 of the Adhiniyam, inter alia, provides that subject to Article 285 of the Constitution the Mahapalika shall impose certain taxes, and may impose any of such taxes one of them being octroi. Article 285 mandates that the property of the Union shall, save, in so far as the Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within the State. For the Corporation, it is urged that it being the property of the Central Government and there being no enactment of the Parliament authorising the imposition of octroi upon the property of the Central Government, the Mahapalika cannot impose and realise the said tax from the Corporation. It is exempt from such a tax. This submission is buttressed by making use of the Articles of Association of the Corporation and urging that, in substance, the Corporation is a department of the Central Government. Learned

Counsel urges that in a number of authorities the Supreme Court while examining the question as to whether a particular Corporation is an instrumentality of the State within the meaning of Article 12 has propounded the view that the veil of the Corporation should be lifted to determine its real character.

11. Indisputably the Corporation is registered under the Companies Act, of 1956 and is a Government Company within the meaning of that Act. In *Western Coalfields Limited Vs. Special Area Development Authority, Korba and Another*, the precise controversy came up for consideration. The submission made there was that since the Appellant Companies before the Supreme Court were wholly owned by the Government of India, the lands and buildings owned by the Companies could not be subjected to property tax. The argument was repelled by observing that even though the entire share capital of the Companies had been subscribed by the Government of India, it could not be predicated that the Companies themselves were owned by the Government of India. The Companies, which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The lands and buildings are vested in and owned by the Companies, the Government of India only owns the share capital. The decisions relied upon by their Lordships are: (1) *Heavy Engineering Mazdoor Union Vs. State of Bihar and Others*, wherein it was held that a corporate company has a separate existence and the law recognised it as a juristic person, separate and distinct from its members. The mere fact that the entire share capital of the company was contributed by the Central Government and the fact that all its shares were held by the President and certain officers of the Central Government did not make any difference to that position: and (2) *Andhra Pradesh State Road Transport Corporation Vs. Income Tax Officer, B-I B-ward, Hyderabad, and Another*, . In this case the Andhra Pradesh State Road Transport Corporation claimed exemption from taxation under Article 289 of the Constitution by which, the property and income of a State is exempt from income tax. It was held that though the Corporation was wholly controlled by the State Government it had a separate entity and its income was not the income of the State Government. This authority, therefore, sounds a death-knell of the contention advanced on behalf of the Corporation. Besides, the declaration of law made therein is binding upon me under Article 141 of the Constitution.

12. Learned Counsel sought to get over this authority by contending that the cases decided by the Supreme Court prior to this decision and even thereafter in the context of Article 12 have not been considered. In particular, learned Counsel relied heavily upon the expression " Corporation owned or controlled by the State " as used in Sub-clause (ii) of Clause (6) of Article 19. First, it is not in the province of this Court to question the correctness of the judgment of the Supreme Court in *Western Coalfields Ltd. (supra)*. There is a presumption that the Supreme Court considered all the aspects of the matter before giving a declaration of law.

13. Secondly, the submission of the learned Counsel appears to be fully met by the Supreme Court in its decisions between Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Their Lordships have held that the word " State " has different meanings depending upon the context in which it is used. It has been given different meaning in different parts of the Constitution. This expression has been given a special meaning in Parts III and IV of the Constitution. Their Lordships emphasised that in Article 12 three aspects require particular notice. These aspects are ; (i) the definition given in Article 12 is not an explanatory and restrictive definition but an extensive definition, (ii) it is the definition of the expression " the State " and not of the term " State " or " States", and (iii) it is inserted in the Constitution for the purposes of parts III and IV. Article 12 uses the word " includes ". It thus extends the meaning of the expression " the State " so as to include within it also what otherwise may not have been comprehended by that expression when used in its ordinary legal sense. The contents of parts III and IV show that the expression " the State " in Article 12 as also in Article 36 is not confined to its ordinary and Constitutional sense as extended by the inclusive portion of Article 12 but is used in the concept of the State in relation to the Fundamental Rights guaranteed by Parts III and IV of the Constitution which principles are declared by Article 37 to be fundamental to the governance of the country and enjoins upon the State to apply in making laws.

14. In Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, Mathew, J., observed:

... Nobody will deny that an agent has a legal personality different from that of a principal. The fact that the agent is subject to the direction of the principal does not mean that he has no legal personality of his own. Likewise, merely on its own, it does not follow that the Corporation cannot be an instrumentality of the State, if it is subject to the control of the Government in all important matters of policy. No doubt there might be some distinction between the nature of the control exercised by the principal over the agent and the control exercised by the State over the Corporation. That, I think, is only a distinction in degree.

15. The Supreme Court in Central Inland Water Transport Corporation Limited (supra) after referring to various decisions of that Court observed:

If there is an instrumentality or agency of the State which has assumed the garb of a Government Company as defined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality of the State. For the purposes of Article 12 one must necessarily see through the corporate veil to ascertain whether behind that veil is the face of an instrumentality or agency of the State .

(underlining by me)

It is thus clear that the veil of the Corporation can be torn only for the purposes of Article 12 and not for the purposes of Article 285 which clearly does not fall either in part III or in part IV of the Constitution. The Corporation, therefore, cannot claim any exemption from octroi on the basis of Article 285 of the Constitution. Sub-clause (ii) of Clause (6) of Article 19 is of no avail as it falls in part HI.

16. A sum of rupees four lakhs and odd, as already indicated, was realised as octroi from the Corporation by the Mahapalika between 15th June, 1982 and 22nd December, 1982. By the impugned orders, the Mahapalika has been directed to refund this amount to the Corporation. I have already taken the viewjhaton or after 15th June, 1982, the Mahapalika lawfully levied and realised octroi from the Corporation. Besides giviug a retrospective operation to Sub-section (4) of Section 3, the Act of 1987 in Section 13 has put the matter beyond the pale of any controversy. In substance, it validates the levy and realisation of octroi by the Mahapalika from the Corporation in the purported exercise of powers u/s 577 (a) of the Adhiniyam.

17. The sum of rupees two lakhs and odd was, as indicated, realised as octroi by the Notified Area subsequent to 7th April, 1979 and prior to 15th June, 1982, namely, during the period when the power of the Notified Area to impose such a tax had been taken away and the tax itself had been abolished. By the impugned orders the Mahapalika has been directed to refund this amount to the Corporation. The first order was passed by the II Civil Judge acting as an appellate authority u/s 472 of the Adhiniyam. The appeal was preferred against the order dated 18th March, 1983 passed by the Mukhya. Nagar Adhikari of the Mahapalika rejecting a representation dated 14th February, 1983. The question is whether the order passed by the Mukhya Nagar Adhikari was appealable at all u/s 472. Let us, therefore, consider Section 472. Sub-section (1) is relevant and may be extracted:

(1) Subject to the provisions hereinafter contained, appeals against any annual value or tax fixed or charged under this Act shall be heard and determined by the Judge. " (underlining by me). The provisions of Sub-section (2) of Section 472 are:

No such appeal shall be heard unless-

- (a) it is brought within fifteen days after the accrual of the cause of complaint ;
- (b) in the case of an appeal against an annual value an objection has previously been made and had been disposed of u/s 209.

....

(e) in the case of an appeal against a tax....the amount claimed from the Appellant has been deposited by him with the Mukhya Nagar Adhikari.

18. Section 473 provides that for the purposes of Section 472, the cause of

complaint shall be deemed to have accrued in the case of an appeal against a tax on the day when payment thereof is demanded or when a bill therefore is served. The first feature is that in order to attract Sub-section (1) of Section 472 the tax should have been charged under the Adhiniyam. Admittedly, the sum of rupees two lakhs and odd was not charged by the Notified Area under the Adhiniyam. It was obviously charged under a different provision, namely, Section 338 of the U.P. Municipalities Act. The second feature is that the said sum was neither demanded nor a bill therefore was served by the Mahapalika upon the Corporation. The Mahapalika had not come into the picture at all when the said sum was realised by the Notified Area. Therefore, on the face of it Section 472 could not be invoked by the Corporation for claiming a refund of the sum of rupees two lakhs and odd. Hence, the order passed by the II Civil Judge directing the Mahapalika to refund the said amount and the order passed by the II Additional District Judge affirming the order are without jurisdiction.

19. Learned Counsel for the Corporation has urged that even if this Court comes to the conclusion that order of refund is without jurisdiction it should not exercise any discretion in favour of the Mahapalika as, admittedly, the Notified Area realised the sum under reference without any authority of law and illegally since its power to impose octroi had been taken away and the tax itself had been abolished. Section 72 of the Contract Act has been invoked on behalf of the Corporation to contend that under the common law it has a right to claim the refund of the tax. Reliance is placed upon a decision of the Supreme Court in the case of Sales Tax Officer, Banaras and Others Vs. Kanhaiya Lal Mukundlal Saraf, , which lays down that where payment of a tax has been made by a party labouring under a mistake of law the party is entitled to recover the same and the party receiving the sum is bound to pay and return it. Section 72 of the Contract Act will be applicable even in the case of a tax liability.

20. Having given an anxious consideration to the last submission I am of the opinion that the same cannot be accepted for more than one reason. First, Section 478(2) of the Adhiniyam provides that effect shall be given by the Mukhya Nagar Adhikari to every decision of either the first appellate court or the second appellate court. Section 501 provides that all orders of the first appellate court shall be executed in the manner as if they were decrees of the Court of Small Causes passed under the Small Causes Courts Act, 1887. Sub-section (2) thereof provides that all orders of the District Judge shall be executed as if they were the decrees of his Court. In the instant case, the order of the first appellate court has apparently merged in the order of the second appellate court. The order of the second appellate court, therefore, will be executed as a decree of the Court. Even if decline to interfere in the exercise of jurisdiction under Article 226 of the Constitution, it will still be open to the Mahapalika to contend that the decree sought to be executed is a nullity. Such an objection cannot possibly be repelled on the ground that this Court has refused to interfere. Necessarily, the Mahapalika will be entitled to take advantage of the finding of this Court that the orders passed by the two appellate, courts are without jurisdiction.

21. Secondly, so far no specific provision has been made in the Rules framed under the Adhiniyam for the refund of taxes realised. Section 219 provides that certain matters shall be regulated and governed by Rules except in so far as the provision therefore is made by the Adhiniyam. One of the matters enumerated in the said provision is the system on which refunds shall be allowed and paid. Even Sub-section (2) of Section 18 of the Act of 1987 will be of no avail to the Corporation for it talks of the refund of any amount paid in excess of the amount due by way of tax under the Adhiniyam as amended by the Act of 1987.

22. Lastly, even in *Kanhaiya Lal Mukund Lal Sarafs* case (supra) the Supreme Court has held that even though Section 72 of the Contract Act entitles a party to recover the money back if paid either under a mistake of law or fact and the party receiving the same is bound to return it back irrespective of any consideration whether the money had been paid voluntarily subject, however, to questions of estoppel, waiver, limitation and the like. It is thus clear that it even " the Mahapalika is held liable to repay the amount realised by the Notified Area the pleas of estoppel, waiver, limitation or the like would be available to it to defeat the claim of the Corporation. I may make it clear that I am expressing no opinion on the question whether the Mahapalika will be liable to refund the sum of rupees two lakhs and odd to the Corporation which was realised by the Notified Area before 15th June, 1982.

23. In sum, the Mahapalika had the jurisdiction to realise octroi from the Corporation with effect from 15th June, 1982, and that right exists even today, Article 285 of the Constitution does not exempt the Corporation from paying octroi to the Mahapalika, the appellate authorities patently erred in directing the Mahapalika to refund the sum of rupees four lakhs and odd to the Corporation which was realised by it as octroi on or after 15th June, 1982, the appellate authorities patently erred in restraining the Mahapalika from realising octroi from the Corporation and from adopting coercive process in the event the tax was not paid by the Corporation and the appellate authorities acted without jurisdiction in directing the Mahapalika to refund to the Corporation a sum of rupees two lakhs and odd which was realised by the Notified Area from the Corporation as octroi before 15th June, 1982. However, it will be open to the Corporation to seek such remedy as may be available to it under the law for the realisation of the said sum of rupees two lakhs and odd. The Mahapalika cannot realise octroi for the period during which it stood abolished in the Notified Area.

24. The petitions succeed and are allowed. The orders dated 30th August, 1983, passed by the II Civil Judge, Gorakhpur and the orders dated 4th October, 1986, passed by the:II Additional District Judge, Gorakhpur are quashed.

25. The interim orders passed in the two writ petitions dated 20th May, 1987 and 20th July, 1987 are vacated. It will be open to the Mahapalika to consume the amounts received by it from the Corporation as octroi under the orders of this Court in any manner which is permissible to it under the law.

26. The parties are directed to bear their own costs.