The Dharangadhra Chemical Works vs Dharangadhra Municipality Another on 3 September, 1985

Equivalent citations: 1985 AIR 1729, 1985 SCR SUPL. (2) 757, AIR 1985 SUPREME COURT 1729, 1985 (4) SCC 92

Author: V.D. Tulzapurkar

Bench: V.D. Tulzapurkar, V. Khalid

PETITIONER:
THE DHARANGADHRA CHEMICAL WORKS

Vs.

RESPONDENT:
DHARANGADHRA MUNICIPALITY ANOTHER.

DATE OF JUDGMENT03/09/1985

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
KHALID, V. (J)

CITATION:
1985 AIR 1729 1985 SCR Supl. (2) 757
1985 SCC (4) 92 1985 SCALE (2)669

ACT:
Bombay District Municipalities Act 1901 sections 60, 61 and 62. Gujarat Municipalities Act, 1963 section 279. The Saurashtra Terminal Tax and Octroi Ordinance 1949 & The Dharangadhra Municipalty octroi Rules and Octroi Bye-laws. Rule 3 and Bye-law 3.
Dharangadhra Municipality - Levy and collection of octroi duty - Whether legal and valid.
Interpretation of Statutes.
Repeal by implication - When arises - Effect of.

HEADNOTE:
The Saurashtra Terminal Tax and Octroi Ordinance No. 47 of 1949 was promulgated and brought into force with effect from 31.8.1949, to enable the State Government to levy and collect octroi duty in specified cities and towns and other

local areas of the State and to pass on the duty so collected to those cities and towns, until Municipalities therein were constituted under the Bombay District Municipalities Act, 1901 and those Municipalities made their own rule and bye-laws enabling them to levy and collect octroi. Section 3 of the Ordinance empowered the State Government to impose octroi duty in towns and cities specified in Schedule I thereto, and the town of Dharangadhra came to be included therein subsequently under a notification with effect from 26.12.49.

The respondent-Municipality by its Resolution dated 30.3.53 enhanced the prevailing rate of octroi duty by 50% without complying with the provisions of sections 60 to 62 of Chapter VII of G the Bombay District Municipalities Act, 1901. The appellant challenged the enhancement in the rate of octroi duty by filing a writ petition, and also filed a suit for refund of the excess amount recovered from it for the period ending September 30, 1961. The High Court dismissed the petition and upheld the enhancement, taking the view that while enhancing the rate of
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octroi, the Respondent-Municipality had followed the procedure prescribed by the Bombay Act for imposing the octroi and that the enhanced imposition was not under Ordinance No. 47 of 1949.

On appeal, this Court held that the enhanced imposition of duty by the Respondent-Municipality was illegal as the mandatory provisions of sections 60 to 62 of the Bombay Act, had neither been complied with or could the enhanced levy be justified under Ordinance No. 47 of 1949, because the State Government alone had the power thereunder to impose the duty or prescribe its rate and not the Respondent-Municipality. To get over the effect of this Court's decision a validating Act being Gujarat Act No. 6 of 197 was passed where under the imposition of octroi levy and collection thereof prior to 30.4.65 was validated.

During the pendency of the writ petition in the High Court, the Respondent-Municipality proceeded to frame its own octroi Rules and Bye-laws under the Bombay Act after complying with all the procedural steps. The Respondent-Municipality passed a Resolution on 17.12.63 approving the draft Rules and Bye-laws. The Divisional Commissioner sanctioned the draft Rules and Bye-laws, However, on March 10, 1965 the State Government issued a Corrigendum to the sanction that had already been accorded with a view to rectify certain printing or typographical errors that had come to the notice of the Respondent-Municipality. Thereafter, the Respondent-Municipality passed a General Board Resolution dated 29.3.1965 resolving to bring into force these Rules and Bye-laws called: "The Dharangadhra Municipality Octroi Rules and Octroi Bye Laws" with effect from 1.5.65, and the requisite Notification was published.

By the aforesaid Octroi Rules and Bye-laws, 1965 the

Respondent-Municipality increased the octroi rates by 12.1/2% on all the goods brought within the Municipal limits of Dharangadhra and also made some changes in the classification of goods so brought in; and issued bills of octroi payable every month. Feeling aggrieved by this action of the Respondent-Municipality, the Appellant filed a writ petition in the High Court challenging the levy of Octroi at the enhanced rate, which was dismissed.

In the appeal to this Court it was contended on behalf of the appellants: (1) That since the exemption from the operation of the Octroi Ordinance No. 47 of 1949 as contemplated by Rules 3 as well as Bye-law 3 was not granted by the State Government, the Municipal Octroi Rules and Octroi Bye-Laws 1965 could not be said

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to have come into force, and the Respondent-Municipality had no authority or power to bring them into force with effect from 1.5.65, and therefore, the levy to the extent of the enhanced rate was bad in Law. (2) That the impugned Octroi Rules and Bye-Laws were framed by the Respondent-Municipality under the Bombay Act, and sanction thereto had also been accorded by the Divisional Commissioner under the Bombay Act on 22nd April 1964, but since the Bombay Act was repealed by Section 279(i) of the Gujarat Act with effect from 1.1.65, and since these Octroi Rules and Bye-Laws were not brought into force before the repeal of the Bombay Act they would have no force of law as sub-section (2) of section 279 of the Gujarat Act does not save them, because under clause (vi) of sub-section (2) of section 279 only such Rules and Bye-Laws framed under the Repealed Act which were immediately in force prior to 1.1.65 would stand saved. (3) That the Corrigendum to the Octroi Rules and Bye-Laws issued by the Gujarat Government on 10.3.65 was not by way of purely correcting typographical or printing errors but virtually amounted to a modification of the Rules and Bye-Laws without following the procedure de novo and, therefore, the impugned Octroi Rules and Bye-Laws could not be said to be valid and could not be brought into force.

Dismissing the appeal,

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HELD: 1.(a) It cannot be disputed that the subject matter dealt with by the Ordinance and the Government Rules framed thereunder was levy and collection of octroi duty and the subject matter dealt with by the Bombay Act and the Municipal Rules and Bye-laws framed thereunder is also levy and collection of octroi duty. Both the pieces of legislation, validly enacted and intended to operate within the Municipal limits of the Respondent-Municipality, dealt with the same subject matter. In such a situation of there 18 repugnancy between the two pieces of legislation, to such an extent that both cannot stand together and operate simultaneously, the later will have the effect of impliedly repealing the former. [766 A-C]

Repeal by implication 18 not ordinarily favoured by the Courts But the principle, on which the rule of implied repeal rests, is that if the provisions of a later enactment are 80 inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together, the earlier is repealed by the later enactment is applied. [766 D]

Kutner v. Phillips,[1891] 2 Q.B. 267 at 272. Zaverbai Amaidas v. The State of Bombay [1955] 1 S.C.R. 799 referred to.

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In the instant case, the two pieces of legislation are so inconsistent with or repugnant to each other that both cannot stand together and such repugnancy arises from (a) the conferal of power to levy duty on two different bodies, namely, the State Government under the Ordinance, and the municipality under the appropriate Act, and obviously the exercise of the power concurrently by both the bodies would be incongruous and entirely destructive of the object for which the power was conferred, and (b) the enhanced rate of duty prescribed by the Municipal Rules and Bye-laws. Having regard to such repugnancy obtaining between the two pieces of legislation dealing with the same Subject matter the later in point of time will have the effect of displacing the former by necessary implication. That such implied repeal or displacement was within the contemplation of the legislative authority which issued the Ordinance of 1949 is amply clear if regard is had to the object with which the Ordinance came to be promulgated to enable the State Government to levy and collect octroi duty, in the state of Saurashtra and to pass on the duties so collected by it those towns and cities until Municipalities therein were constituted under the appropriate Act and those Municipalities made their own Rules and Bye-laws enabling them to levy and collect octroi and other usual Municipal taxes. [767 D-H]

2.(a) The Municipal Octroi Rules and Bye-laws were validly made by the respondent Municipality on 17.12.63 by following the procedure prescribed by the Bombay Act, whereafter these were forwarded to the Divisional Commissioner who made some suggestions which were accepted by the respondent-Municipality and ultimately by order dated 22.4.64 sanctioned the Rules and Bye-laws. Up to this stage everything was validly done under the Bombay Act prior to its repeal on 1.1.65. Under clause (vi) of sub-section (2), any order made and which was in force immediately before the commencement of the Gujarat Act has been saved, inasmuch it was provided that such order shall be deemed to have been made under the Gujarat Act and will continue to operate until modified or rescinded by another order passed under the Gujarat Act. [770 E-G]

(b) What is saved by the order of sanction dated 22.4.64 are the sanctioned Rules and Bye-laws. Clause (vi)

uses both the expressions, 'order' and 'Rule and Bye-law' separately and distinct from each other but such separate or distinctive use is conceivably made to cover different situations. In a case where the order that is saved happens to be an order sanctioning rules and Bye-Laws, the two will have to be regarded as part and parcel
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of a single INSTRUMENT which is saved in its entirety. What is saved under clause (vi) of sub-section (2) of section 219 are the sanctioned MunicipaI Octroi Rules and Bye-laws 1965. [771 B]

3. The material on record clearly shows that the Corrigendum dated 10.3.1965 was issued with a view to rectify typographical errors or mistakes that bad crept in the typed copies of the Rules and Bye-laws forwarded to the Divisional Commissioner which had come to the w dice of the Respondent-Municipality. Even the omission of sub-rule (5) of Rule 5 in the copies forwarded appears to be an inadvertent typographical mistake. 1772 E

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1225 of 1972.

From the Judgment and Order dated the 21st January, 1971 of the Gujarat High Court in Special Civil Application No. 786 of 1965.

B. Seth, Kamal Mehta, K.S. Nanavati and Mrs. A.K. Verma for the Appellant.

Soli J. Sorabjee, P.M. Raval, M.P. Goswami and H.N. Salve for Respondent No.1.

S.T. Desai, Girish Chandra and R.N. Poddar for Respondent No.2.

The Judgment of the Court was delivered by TULZAPURKAR, J. This litigation in which the Appellant has challenged the levy of Octroi Duty imposed by the respondent Municipality under its Octroi Rules and Bye- laws framed under the Bombay District Municipal Act, 1901 (as adopted by the Government of Saurashtra) and continued under the Gujarat Municipalities Act 1963. (as adapted and applied to the State of Saurashtra) has a chequered history.

Briefly stated the facts leading to the present appeal are these. The Appellant is a Company registered under the Indian Companies Act carrying on business of manufacturing Soda Ash in its factory at Dharangadhra within the Municipal limits of the Respondent-Municipality. Originally the Respondent-Municipality being a District Municipality was governed by the provisions of the Bombay District Municipal Act, 1901, as adapted and applied to the State of Saurashtra, (for short the Bombay Act) but with effect from 1.1.1965 it is governed by the Gujarat Municipalities Act, 1963 (for short the Gujarat Act).

An Octroi Ordinance called the Saurashtra Terminal Tax and Octroi Ordinance No. 47 of 1949 was promulgated by the Rajpramukh and brought into force with effect from 31.8.1949. The object of the Ordinance was to enable the State Government to levy and collect octroi duty in specified cities and towns and other local areas of the State and to pass on the duty so collected by it to those cities and towns until Municipalities therein were constituted under the Bombay Act and those Municipalities made their own Rules and Bye-laws enabling them to levy and collect octroi and other Municipal taxes. To achieve this object s. 3 of the Ordinance empowered the State Government to impose octroi duty in towns and cities specified in Schedule I thereto, in which Schedule the town of Dharangadhra came to be included subsequently under notification with effect from 26.12.1949. Section 4 of the ordinance authorised the State Government to make Rules for the imposition and collection of octroi duty but under the Rules so framed the Municipality of the concerned city or town was to be the collecting machinery. After the inclusion of the Dharangadhra town in the Schedule I octroi was being levied in that town by the State Government under its Rules but the same was being collected through the machinery of Respondent Municipality.

It appears that the Respondent Municipality by its Resolution dated 30.3.1953 enhanced the prevailing rate of octroi duty by 50% without complying with the provisions of sections 60 to 62 of Chapter VII of the Bombay Act. The appellant challenged this enhancement in the rate of octroi duty by filing a writ petition (No. 769 of 1962) in the High Court of Gujarat and also filed a suit for refund of the excess amount recovered from it for the period ending September 30, 1961 after serving a statutory notice on the respondent Municipality. The High Court dismissed the writ petition and upheld the enhancement on the view that while enhancing the rate by its Resolution dated March 30, 1953 the Respondent Municipality had followed the procedure prescribed by the Bombay Act for imposing the octroi and that the enhanced imposition was not under the Ordinance No. 47 of 1949. Un appeal, this Court by its judgment dated 20.9.1972 held that the enhanced imposition of duty by the Respondent Municipality was illegal as the mandatory provisions of ss. 60 to 62 of the Bombay Act had not been complied with nor could the enhanced levy A be Justified under Ordinance No. 47 of 1949 because the State Government alone had the power thereunder to impose the duty or prescribe its rate and not the Respondent Municipality. To recover the effect of this Court's decision a Validating Act being Gujarat Act No. 6 of 1978 was passed whereunder the imposition of octroi levy and collection thereof prior to 30.4.1965 was validated. We are not, however, concerned with the Validating Act inasmuch as that Act has nothing to do with the imposition of levy for the period on and after 1.5.1965 with which the present: appeal is concerned.

It appears that during the pendency of the aforesaid writ petition in the Gujarat High Court the Respondent- Municipality proceeded to frame its own Octroi Rules and Bye-laws under the Bombay Act and after complying with all the procedural steps, such as publishing the draft Rules and Bye-laws, inviting and considering objections thereto, etc. the Respondent-Municipality passed a Resolution on 17.12.1963 approving the said draft Rules and Bye-laws whereafter these were forwarded through the Collector to the Divisional Commissioner, Rajkot; the Divisional Commissioner made some suggestions to the Respondent-Municipality which were accepted by it; ultimately by his order dated 22.4.1964 the Divisional Commissioner sanctioned the draft Rules and Bye-laws; however, on March 10, 1965 the State Government (as in the meantime the post of the Divisional Commissioner was abolished) issued a Corrigendum to the sanction that had already

been accorded With a view to rectify certain printing or typographical errors that had come to the notice of the Respondent-Municipality and thereafter the Respondent-Municipality passed a General Board Resolution dated 29.3.1965 resolving to bring into force these Rules and Bye-laws called "The Dharangadhra Municipality Octroi Rules and Octroi Bye Laws with effect from 1.5.1965. The requisite Notification bringing these into force on and from 1.5.1965 was issued under s. 103 of the Gujarat Act. It may be stated that in the meantime the Bombay Act had been repealed by the Gujarat Act which had come into force with effect from 1.1.1965 By the aforesaid Octroi Rules and Bye-laws, 19h5 the Respondent Municipality increased the octroi rates by 12- 1/2% on all the goods brought within the Municipal limits of Dharangadhra and also made some changes in the classification of goods so brought in; pursuant thereto it issued bills of octroi payable every month. Feeling aggrieved by this action of the Respondent Municipality the Appellant filed a writ petition (No. 786 of 1965) on 20.7.1965 in the Gujarat High Court challenging the levy of octroi at the enhanced rate under the said Octroi Rules and Bye-laws on several grounds and sought an order restraining the Respondent-Municipality from levying and collecting and/or enforcing the recovery thereof in any manner. The High Court by its judgment and order dated the 21st January 1971 negatived all the grounds of challenge and dismissed the writ petition but by its order dated 8.10.1971 granted a certificate of fitness for appeal to this Court under Art. 133 (l)(a) and (b) of the Constitution and hence the instant appeal by the appellant.

Though the levy of octroi duty at the enhanced rate under the impugned Octroi Rules and Bye-laws 1965 was challenged on several grounds in the High Court, counsel for the Appellant in this appeal has raised only three contentions on the basis of which the invalidity of those Octroi Rules and Bye-laws has been pressed into service before us. namely:

> (i) Since the exemption from the operation of the Octroi Ordinance No. 47 of 1949 as contemplated by Rule 3 as well as by Bye-law 3 was not granted by the State Government the Municipal Octroi Rules and Octroi Bye-laws 1965 could not be said to have come into force and the Respondent Municipality had no authority or power to bring them into force with effect from 1.5.1965 and therefore, the levy to the extent of the enhanced rate is bad in law.
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> (ii) That the impugned Octroi Rules and Bye-laws were framed by the Respondent-Municipality under the Bombay Act and sanction thereto had also been accorded by the Divisional Commissioner Rajkot under the Bombay Act on 22nd April 1964 but since the Bombay Act was repealed by s. 279(1) of the Gujarat Act with effect from 1.1.1965 and since these Octroi Rules and Bye-laws were not brought into force before the repeal of the Bombay Act they would have no force of law as sub-s. (2) of s. 279 of the Gujarat Act does not save them because under clause (vi) of sub-s.(2) of s. 279 only such Rules and Bye-laws framed under the Repealed Act which were immediately in force prior to 1.1.1965 would stand saved.
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> (iii) That the Corrigendum to the Octroi Rules and Bye laws issued by the Gujarat Government on 10.3.1965 was not by way of purely correcting typographical or printing errors but virtually amounted to a modification (like inserting Sub-Rule (j)

in Rule (5) or the Rules are Bye-laws without following the procedure de novo, and, therefore, the impugned Octroi Rules and Bye-Laws could not be said to be valid and could not be brought into force.

In our view there is no substance in any of these contentions and we proceed to give our reasons for our view in regard to each presently.

As regards the first contention raised by counsel for the appellant it will be necessary to see what Rule 3 and Bye-laws, of the Municipal Octroi Rules and Bye-laws, 1965 provide; both are in identical language and purport to and purport to deal with the commencement of these Municipal Rules and Bye-laws and state these Rules and Bye-laws:

"shall come into force after an exemption is granted by the Government from the Saurashtra Terminal Tax and Octroi Ordinance No. 47 of 1949 and the Rules frames thereunder which are at present in force.

Counsel pointed out that admittedly prior to 1.5.1965 when these Municipal rules and Bye-laws where purportedly brought into force L no exemption from the Octroi Ordinance No. 41 f 1949 and the Rules framed thereunder was granted By he State Government as contemplated by the aforesaid provision which could and ought to have been done by issuing a C Notification withdrawing or deleting the Dharangadhra town and its Municipality from Schedule I to that Ordinance. Counsel urged that ill view of the Clear Language of the above provision the granting of such exemption must be regarded as a condition precedent to the coming into force of these municipal Octroi Rules and Bye-Laws and since the condition precedent was not compiled with these Rules could not be said to have come into force and the levy at the enhanced enhanced rate would be bad in law. Counsel urged that the high Court has erroneously treated the insertion. of Rules 3 Bye-Law which relate to the commencement these Rules and Bye-laws to be a mere surplusage.

In Our View The contention proceeds upon a misconception of the legal position in the matter and ignores and the object with which the ordinance of 1949 had been, promulgated as also the object of inserting Rule 3 and Bye-law 3 in the Municipal Octroi Rules and Bye-laws 1965. It cannot be disputed that the subject matter dealt with by the Ordinance and the Government Rules framed thereunder was levy and collection of octroi duty and the subject matter dealt with by the Bombay Act and the Municipal Rules and Bye-laws framed thereunder (and said to be continued under the Gujarat Act) is also levy and collection of octroi duty; in other words both the pieces of legislation, validly enacted and intended to operate within Municipal limits of the Respondent- Municipality, deal with the same subject matter. In such a situation if there is a repugnancy between the two pieces of legislation, to such an extent hat both cannot stand together and operate simultaneously, the later will have the effect of implied repealing the former.

It is true that repeal by implication is not ordinarily favoured by the Courts but the principle on which the rule of implied repeal rests has been stated in Maxwell on 'Interpretation of Statutes' (Twelfth Edition) at page 193 tuhs:

"If, however, the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot stand together the earlier is abrogated by the later . (vide Kutner V. Phillips)[1891] 2 Q.B. 267 at 272.

In Zverbhai Amaidas v. The State of Bombay [1955] 1 S.C.R. 799, this Court has approved, the above principle in the context of two pieces of legislation, namely, The Essential Supplies (Temporary Powers) Act, 1946 as amended by Act LII of 1950 (a Central Act) and Bombay Act No. XXXVI of 1947 the provisions whereof in the context of enhanced punishment were repugnant to each other. The Court held that the question of punishment for contravention of orders under the Essential Supplies (Temporary Powers) Act both under the Bombay Act and the Central Act constituted a single subject matter and in view of Art. 254(1) of the Constitution Act LII of 1950 (Central enactment) must prevail. The Court quoted with approval Lord Goddar's observations in Smith v. Benabo 1937 1 K.B. 518, namely It is a well settled rule of construction that if a later statute again describes an offence created by a previous one, and imposes a different punishment, or varies The procedure, the earlier statute is repealed by the later statute. After quoting these observations the Court went on to say:

"It is true, as already pointed out, that on a question under Art. 2541) whether an Act of Parliament prevails against a law of the State, no question of repeal arises; but the principle on which the rule of implied repeal rests, namely, that if the subject matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Art. 254(2) whether the further legislation by Parliament is in respect of the same matter as that of the State law. We must accordingly hold that section 2 of Bombay Act No. XXXVI of 1947 cannot prevail as against sec. 7 of the Essential Supplies (Temporary Powers) Act No. XXXIV of 1946 as amended by Act No. LII of 1950."

The aforesaid principle of implied repeal has been approved and applied in a couple of other decisions of this Court, particularly in T. Barai v. Henry Ah Hoe and Another [1983] I S.C.R. 905. D In the instant case the two pieces of legislation are so inconsistent with or repugnant to each other that both cannot stand together and such repugnancy arises from a) the conferal of power to levy duty on two different bodies, namely, the State Government under the Ordinance and the Municipality under the appropriate Act and obviously the exercise of the power concurrently by both the bodies would be incongruous and entirely destructive of the object for which the power was conferred, and (b) the enhanced rate of duty prescribed by the Municipal Rules and Bye-laws - a situation similar to enhanced punishment provided by a later enactment. Having regard to such repugnancy obtaining between the two pieces of legislation dealing with the r same subject matter

the later in point of time will have the effect of displacing the former by necessary implication. That such implied repeal or displacement was within the contemplation of the legislative authority which issued the Ordinance of 1949 will be amply clear if regard is had to the object with which the Ordinance came to be promulgated. The avowed object of the Ordinance was to enable the State Government to levy and collect octroi duty in towns and cities of the erstwhile State of Saurashtra and to pass on the duties so collected by it to those towns and cities until Municipalities therein were constituted under the appropriate Act and those Municipalities made their own Rules and Bye-laws enabling them to levy and collect octroi and other usual Municipal taxes; clause (9) of the Ordinance made express provision for making over such collections to concerned towns and cities. That such was the object of the Ordinance has been clearly stated by this Court in Mulchand Odhavji v. Rajkot Borough Municipality, A.I.R. 1970 S.C. 685. In other words the Ordinance and the Government Rules framed thereunder were a stop gap measure, being transitional in character which would automatically cease to operate no sooner the concerned Municipality (here Dharangadhra Municipality) made and published its own Octroi Rules and ye-laws under the appropriate Act.

To counter Act the inference of implied repeal, strong reliance was placed by Counsel for the appellant on the language used in rule and Bye-law 3 which state that these Rules shall come into force after the exemption from the Ordinance and the Rules thereunder has been granted and according to Counsel such Language negative any suggestion of implied repeal. In our view rule 3 as well as Bye-law proceed on a mistaken assumption of law that the exemption from the Ordinance and the rules framed thereunder was necessary before the Municipal Rules and Bye-laws could be enforced. Once the Municipal Rules and ye-laws are validly made and also validly brought into force by following the requisite procedure prescribed in that behalf under the appropriate Act the earlier Government Rules would stand pro-tanto repealed notwithstanding what is contained in Rule 3 or Bye-law 3. The legal effect of such a provision (as is contained in Rule 3 or Bye-law 3) would not be and is not to restrain or prevent the municipalities from bringing into force its Rules and Bye-laws by following the prescribed procedure. The real aim and object of Rule 3 or Bye-law 3 sees to be to prevent double taxation. If the insertion of Rule 3 or Bye-law 3 was because of a wrong belief or assumption made in the matter of the legal position the Court has to disregard such belief or assumption, for, it is well settled that the beliefs or assumptions of those who frame Acts of Parliament cannot make the law' (vide Lord Radcliffe in Inland Revenue V. Dowdell O'Mahoney & Co. Ltd. 1952 All England Law Reports 531 at 544). Therefore, the Municipal Rules and Bye-laws 1965 having been validly brought into force after following the prescribed procedure in that behalf, the Government Rules under the Ordinance got impliedly repealed.

Counsel for the appellant also raised the question as to whether the Municipal Rules and Bye-laws being subordinate piece of legislation could repeal either expressly or by implication the Ordinance promulgated by Rajpramukh and the Rules framed thereunder by the State Government and urged that the Municipal Rules or ye-laws could not do so; he further urged that for effecting such repeal the Municipal Rules and Bye-laws, 1965 A should have at least been raised to the status of parent legislation by deeming them to have been incorporated in the Statute as is done in some cases like the Town Planning Acts which provide that as soon as a final town planning scheme comes into force it shall be deemed to have been incorporated in the Act itself. The contention as formulated really misses the vital aspect that the effective charge and levy of the octroi is imposed by the rules

and not by the parent legislation, be it an Ordinance or the appropriate Municipal Act. The parent legislation merely confers power on the specified body or authority to frame Rules for the purpose of levying and collecting octroi duty. Under the Ordinance of 1949 it was the State Government on whom such power had been conferred while under the appropriate Act such power has been conferred on the concerned Municipality; in either case the levy and collection of the duty is by means of subordinate legislation and if such subordinate legislation is validly enacted by following the prescribed procedure under the parent legislation there is no reason why such subordinate legislation should not have the effect of impliedly repealing the earlier subordinate legislation and no question of one named body or authority being lower than the other can arise; in other words the status or character of the Rule making body would be irrelevant. In this view of the matter there would be no necessity of raising the Municipal Rules and Bye-laws to higher status to the parent Legislation as contended by the Counsel for the appellant. The first contention therefore fails.

Having thus rejected the first contention of the appellant for the reasons indicated above it is unnecessary for us to consider the effect of deletion of Rule 3 and Bye- law 3 from these Octroi Rules and Bye-laws done by the respondent Municipality and which deletion was sanctioned by the State Government on 13.4.1966 as such action was clearly taken ex major cautela and the operation of these Rules and Bye-laws cannot on that account be postponed but these will have to be regarded as having come into force with effect from 1.5.1965. G The second contention relates to the effect of the repeal of the Bombay Act under s. 279(1? of the Gujarat Act. The question is what has been saved under sub-s. (2) of s. 279 after effecting such repeal. Counsel for the appellant referred to clause (vi) of sub-s. (2) which runs thus:

> "(2) Notwithstanding the repeal of the said Acts,-
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> (vi) any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, or form made, issued, imposed, or granted in respect of the said boroughs or districts and in force immediately before the date of the commencement of this Act shall in so far as they are not inconsistent with the provisions of this Act be deemed to have been made, issued, imposed or granted under this Act in respect of the borough and shall continue in force until it is superseded or modified by any appointment, notification, notice, tax, fee, order, scheme, licence, permission, rule, bye-law, or form made issued, imposed or granted under this Act;

Relying upon the words "and in force immediately before the date of the commencement of this Act" occurring in the above provision counsel urged that the Municipal Octroi Rules and Bye-laws in question had been merely framed and at the most had been sanctioned under the repealed Act (the Bombay Act) but these had not been brought into force immediately before the date of the commencement of the Gujarat Act, namely, 1.1.1965 and, therefore, could not be said to have been saved under the aforesaid provision. Counsel pointed out that the aforesaid clause (vi) uses both the expressions "order" and "Rule and Bye-law" separately and therefore, Rules and Bye-laws cannot be confused with the order of sanction passed herein by the Divisional Commissioner on 22.4.1964. It is not possible to accept this contention for more than one reason. In the first place admittedly the

Municipal Octroi Rules and Bye-laws were validly made by the respondent Municipality on 17.12.1963 by following the procedure prescribed by the Bombay Act, whereafter these were forwarded to the Divisional Commissioner made some suggestions which were accepted by the respondent Municipality; and ultimately by his order dated 22.4.1964 the Divisional Commissioner sanctioned these Rules and Bye- laws. In other words up to this stage everything was validly done under the Bombay Act prior to its repeal on 1.1.1965. Under clause (vi) of sub-6. (2) any order made and which was in force immediately before the commencement of the Gujarat Act has been saved, inasmuch as it is provided that such order shall be deemed to have been made under the Gujarat Act and will continue to operate until modified or rescinded by another order passed under the Gujarat Act. If the Divisional Commissioner's order sanctioning the Rules and ye-laws is thus saved that order cannot be looked at divorced from what was sanctioned thereunder; what was sanctioned would be a part and parcel of the order of sanction.

To say that merely the order of sanction dated 22.4.1964 is saved A and not the Rules and Bye-laws is to view the order of sanction in the air. In substance what is saved are the sanctioned Rules and Bye-laws. It is true that clause (vi) uses both the expressions 'order' and 'Rule and Bye-law' separately and distinct from each other but such separate or distinctive use is conceivably made to cover different situations. In a case where the order that is saved happens to be an order sanctioning Rules and Bye-laws the two will have to be regarded as part and parcel of single instrument which is saved in its entirety. In other words what is saved under clause (vi) of sub-s. (2) of s. 279 are the sanctioned municipal Octroi Rules and Bye-laws, 1965.

Secondly the question could be considered under s. 7(b) of the Bombay General Clauses Act, 1904. Section 7 deals with the effect of repeal an reads thus:

> "7. Where this Act or any Bombay Act or Gujarat Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not-
>
> (a) xx xx xx
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder;"

The Divisional Commissioner's order according sanction is obviously saved thereunder but even Rules and Bye-laws could be covered by the expression "anything duly done- occurring in clause (b) above inasmuch as the expression 'anything duly done-' would be comprehensive enough to take in not only the things done but also the effects or legal consequences flowing therefrom. In M/S Universal Imports Agency and Another v. The Chief Controller of l ports and Export & Others, [1961] 1 S.C.R. 305, while interpreting the expression "things done" occurring in para 6 of the French Establishments' (Application of Laws) Order, 1954, this Court has taken the view that such expression is comprehensive enough to take in not only things done but also the effects or the legal consequences flowing therefrom. In so interpreting the said expression the Court followed the English decision in The Queen v. Justice of the west Riding of Yorkshire, [1876] 1 Q.B.D. 220, where

the notice was given by a Local Board of Health of intention to make a rate under the Public Health Act, 1848, A and the amending Acts but before the notice had expired thee Acts were repealed by the Public Health Act, 1875 which contained a saving of "anything duly done" under the repealed enactments, but the Local Board, in ignorance of the repeal, made a rate purporting to be under the repealed Act, and it was held that as the notice was given before the repealing Act the making of the rate was also saved by the words "anything duly done" under the repealed enactment. This Court pointed out that the English decision was illustrative of the point that it is not necessary that an impugned thing in itself should have been done before the Act was repealed but it would be enough if it was integrally connected with and was a legal consequence of a thing done before the said repeal. Therefore, it is not possible to accept the contention that merely the order of sanction was saved and not the Municipal Octroi Rules and Bye-laws, 1965.

As regards the last contention it is difficult to accept that the Corrigendum dated 10.3.1965 amounts to modification of the Rules and Bye-laws. The material on record clearly shows that corrigendum was issued with a view to rectify typographical errors or mistakes that had crept in the typed copies of the Rules and Bye-laws forwarded to the Divisional Commissioner which had come to the notice of the Respondent-Municipality. Even the omission of sub-rule (5) of Rule 5 in the copies forwarded appears to be an inadvertant typographical mistake. Besides, 80 far as the Rules are concerned the High Court has rejected the contention on the basis that the corrigendum even if lt is held to amount to modification in regard to sub-rule (5) of Rule 5 the same cannot be held to be outside the powers of the Government. The contention i, therefore, rejected.

In the result the appeal fails and is dismissed. There will be no order as to costs.

N.V.K. Appeal dismissed.