Calcutta Municipal Corporation & ... vs M/S Shrey Mercantile Pvt.Ltd.&Others on 9 March, 2005

Equivalent citations: AIR 2005 SUPREME COURT 1879, 2005 AIR SCW 1492, 2005 (3) SLT 116, (2005) 2 KHCACJ 231 (SC), (2005) 2 CAL LJ 72, 2005 (2) KHCACJ 231, 2005 (3) SCALE 20, 2005 (4) SCC 245, 2005 (2) ALL CJ 1347, (2005) 3 JT 143 (SC), 2005 (4) SRJ 240, 2005 (3) JT 143, 2005 ALL CJ 2 1347, (2005) 2 CAL HN 120, (2005) 3 SCJ 226, (2005) 3 SUPREME 92, (2005) 3 SCALE 20, (2005) 2 KCCR 999, (2005) 100 CUT LT 235

Bench: S.N. Variava, Ar. Lakshmanan, S.H. Kapadia

CASE NO.:
Appeal (civil) 5631 of 2000

PETITIONER:
Calcutta Municipal Corporation & Others

RESPONDENT:
M/s Shrey Mercantile Pvt.Ltd.&Others

DATE OF JUDGMENT: 09/03/2005

BENCH:
S.N. VARIAVA & Dr. AR. LAKSHMANAN & S.H. KAPADIA

JUDGMENT:

J U D G M E N T WITH CIVIL APPEAL No.6121 OF 2000 State of West Bengal Appellant Versus M/s Shrey Mercantile Pvt. Ltd. & Others Respondents AND CIVIL APPEAL No.412 OF 2001 Calcutta Municipal Corporation & Others Appellants Versus M/s Avenue Properties (P) Ltd. & Anr. Respondents KAPADIA, J.

The short question which arises for determination in these civil appeals by grant of special leave by Calcutta Municipal Corporation is whether the imposition for the process of change in the name of the owner in the assessment books of the corporation is in the nature of "a fee" or "tax".

For the sake of convenience, we refer to the facts of Civil Appeal No.5631 of 2000.

Premises bearing No.9A, Jatindra Mohan Avenue, Calcutta - 700 006 belonged to Tapas Ghosh, Meenakshi Sinha and Gayatri Chandra. By several deeds of conveyance, they sold the said premises to M/s Shrey Mercantile (P) Ltd., M/s Drishti Mercantile (P) Ltd. and M/s KIC Resources Ltd. (hereinafter referred to as "the developers"). The building in the premises was very old and was in a dilapidated condition. The developers decided to construct a new building after demolishing the

existing old structure. The developers submitted the building plan for sanction which the corporation refused to accept without the names of the developers being brought on record by way of mutation. On 21.3.1997, the developers applied for mutation by deletion of the names of the previous owners and substitution of their names for which the corporation demanded mutation fees of Rs.3 lacs under Calcutta Corporation (Taxation) Regulations, 1989. This demand was challenged by filing of writ petition in the Calcutta High Court.

The Calcutta Municipal Corporation (Amendment) Act, 1988 was passed by the State Legislature, which was published in the gazette on 9.1.1989 and which came into effect from 20.2.1989. Section 7 of the Amendment Act (XXI of 1988) provided as under:

> "Section 7. Amendment of Section 183 In sub- section 183 of the Principal Act (1) after the words "Under this Section", the words "and upon payment of such fees as may be determined by regulation" shall be inserted, and (2) the words "in such form and in such manner as may be prescribed" shall be omitted."

In terms of the aforestated Amendment Act, the corporation made Calcutta Corporation (Taxation) Regulations, 1989, in purported exercise of the powers conferred by section 602 read with section 183(5). The said regulations inter alia provided that fees for recording of transfer or devolution of title of any land or building under section 183 shall be as per the schedule reproduced hereunder:

> "SCHEDULE
>
> 1) In the case of transfer/agreement for sale or cost of acquisition or in the case where there is certificate or in the case of testamentary succession Amount of fee in rupees
>
> (a) If the price/value of the property declared does not exceed rupees fifty thousand.
>
> 0.5% of the price/value
>
> (b) Where such price/value exceeds rupees fifty thousand but does not exceed rupees one lakh.
>
> 1% of the price/value.
>
> (c) Where such price/value exceeds rupees one lakh but does not exceed rupees three lakh.
>
> 1.5% of the price/value.
>
> (d) Where such price/value exceeds rupees three lakhs but does not exceed rupees five lakhs.
>
> 2% of the price/value.

(e) Where such price/value exceed rupees five lakhs.

2.5% of the price/value.

(2) In the case of transfer by a deed of lease/sub-

lease/assignment or such other similar instrument, the amount to be paid will be at the same rates as at (1) above, on the value shown in the document for Stamp Duty:

Provided that in calculating the amount of fee to be paid under (1) or (2) above any fraction of a rupee amounting to fifty paise or more shall be rounded off to the nearest rupee.

(3) In the case of intestate succession Amount of fee

(a) If the last decided annual valuation does not exceed rupees three thousand.

Rs.25

(b) If such valuation exceeds rupees three thousand but does not exceed rupees six thousand.

Rs.50

(c) If such valuation exceeds rupees six thousand but does not exceed rupees ten thousand.

Rs.100

(d) If such valuation exceeds rupees ten thousand but does not exceed rupees fifteen thousand.

Rs.200

(e) If such valuation exceeds rupees fifteen thousand Rs.250 In case of thika tenant/hut owner in a Bustee hut premises.

Rs.20"

In the writ petition, the developers pleaded that the said regulations in the guise of imposing "a fee" had in fact imposed a tax without sanction of law; that the impost was on ad valorem basis and not in commensuration with the expenses incurred by the corporation in rendering the alleged services; that prior to the amendment of section 183 by Act XXI of 1988, no fee was imposed for mutation; that after the

amendment and framing of the aforestated regulations, enormous amounts were sought to be levied on ad valorem basis in the case of mutations consequent upon inter-vivos transfers vis-a-vis mutations on account of intestate successions where fees were charged at a flat rate, particularly when the functions performed by the corporation with regard to the mutations remained the same. That, whether the property was valued below Rs.50,000/- or whether it was valued above Rs.2 lacs, the function of the corporation with regard to mutation was the same. It was further averred that whatever may be the cause of mutation, whether it is because of transfer or change of ownership due to succession or otherwise, the function of the corporation in the matter of mutation remained the same and even the expenses, if any, incurred by the corporation in performing such functions did not vary, whatever may be the value of the property or the cause of mutation. It was further averred in the writ petition that under the provisions of the Act, the owner was primarily responsible to the corporation to pay the consolidated rate and, therefore, it was necessary for the corporation for the purposes of recovery of consolidated rate to maintain records relating to the ownership of the premises including the name and address of the owner who was liable to pay the consolidated rate. Further, the corporation was required to maintain municipal assessment book under section 191 containing the particulars of the premises, the names and addresses of the owners and the annual value of the premises and, therefore, in order to keep track of the persons liable to pay the tax, it was necessary to record the change in the ownership to facilitate the recovery of taxes and, therefore, the corporation was not providing any special civic service to the citizens. In the circumstances, there was no justification for levy of so called "fees". Further, the said levy was on ad valorem basis which circumstance indicated that in the garb of fees, the corporation purported to levy and recover taxes which it was not authorized to do under section 183(5) of the 1980 Act. Moreover, the aforestated Taxation Regulations were also challenged as arbitrary, irrational, unjustified and discriminatory on the ground that the corporation had no authority to charge different rates depending on the cause of transfer and value of the property, particularly when the act of mutation was the same, be it transfer or devolution of right, title and interest by way of testamentary or intestate succession.

By judgment and order dated 31.1.2000, the learned Single Judge, held, that mutation was the process of change of name of the owner in the books of the corporation; that the impugned regulations had failed to satisfy the requirement of quid pro quo; and that the corporation was not justified in using its power to levy fees on mutation by charging large sums which partake of the character of taxation. According to the learned Judge, a bare look at the schedule of the regulations shows that in the garb of imposition of mutation fees, the corporation has done nothing other than to impose a tax. Accordingly, the writ application was allowed.

Aggrieved by the aforestated judgment of the learned Single Judge, the matter was carried in appeal by the corporation to the Division Bench. According to the

impugned judgment of the Division Bench, the essential purpose of section 183 was to mutate somebody's name; that no other service of any kind whatsoever was rendered to the rate-payers; that under section 183(5). mutation fee was merely to be prescribed by regulations and not to impose a tax in the garb of fees; that no such delegation was ever made in favour of the corporation; that the rate of levy on ad valorem basis itself indicated that the levy was in the nature of a tax; that the different rates prescribed for mutation in the case of transfers vis-a-vis intestate succession indicated that the levy was a tax and not a fee; that the said provision was not for the benefit of the owner of the premises but it was for statutory compliance, failure to comply wherewith was to attract penal consequences; that no benefit was conferred on the rate-payers and on the contrary, the said provision was for the benefit of the corporation; that the nature of the services rendered to the rate- payers for mutation had no connection with the quantum of fees sought to be levied; that the fee was neither regulatory nor compensatory; and that the impugned regulations were discriminatory inasmuch as the purchasers were subjected to a higher fee than those who got the ownership of property by way of intestate succession, wholly overlooking the fact that both these groups for all practical purposes of taxation constituted one class by themselves. Accordingly, the impugned regulations were held to be arbitrary and violative of articles 14 and 246 of the Constitution.

Mr. Tapash Ray, learned senior advocate appearing on behalf of the appellant submitted that numerous services were rendered by the corporation under the Act to the citizens, for which it needed funds. It was urged that the difference between a fee and a tax based on quid pro quo which once existed is now almost irrelevant as a test and, therefore, the High Court had erred in holding that mutation fee was bad on account of absence of quid pro quo. He submitted that the law as it stands today no longer requires nexus between the service rendered and the fee charged. He submitted that even otherwise for the purposes of ascertaining the quid pro quo, it was incumbent upon the High Court to consider various obligatory and discretionary functions of the corporation as laid down in sections 29 and 30 of the Act and the spending of mutation fees so collected. He submitted that the fees collected were applied to meet obligatory and discretionary functions and, therefore, the requirement of quid pro quo was satisfied. He submitted that with the collection of fees and taxes, the corporation was able to meet a fraction of its expenses which were needed for the owners and occupiers of a building and, therefore, the High Court had erred in holding that the imposition was in the nature of a tax and not a fee, for want of quid pro quo. Learned counsel further submitted that a tax and a fee are both compulsory exaction of money by public authorities and a levy in the nature of a fee does not cease to be of that character merely because it does not have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. The element of quid pro quo, according to the learned counsel, was not always a sine qua non for a fee nor is the element of quid pro quo necessarily absent in every tax. According to the learned counsel, the purchasers of land and building belong to a separate class from persons who inherit property under a

testamentary disposition or by way of intestate succession; that these persons constitute different classes/categories and, therefore, there was no violation of article 14 of the Constitution in the matter of levy of mutation fees at different rates from different categories of persons. In the circumstances, it was submitted that the levy of mutation fees by the corporation was in the nature of "a fee" in terms of section 183(5) and, therefore, the corporation was entitled to prescribe mutation fees which it has done under the above Regulations and, therefore, there was no violation of articles 14 and 246 of the Constitution.

Shri Pradip Kumar Ghosh, learned senior counsel appearing on behalf of the original petitioners submitted that although mathematical precision is not accepted in the matter of correlation between the service rendered and the imposition, the law as it stands today certainly requires an imposition in the nature of fees to be based on rendition of service; that no charge can be levied as a fee without any correlation between the amount of levy and the cost of any service; that in the present case, the corporation in the matter of taxation was duty bound to maintain assessment record containing names of the occupiers, names of the owners, description of the property, annual value etc. and as a matter of taxation, the corporation had to maintain up to date record in order to facilitate expeditious recovery of taxes from the existing owners/occupiers. According to the learned counsel, mutation was the process for change in the name of the owner in the assessment books of the corporation and, therefore, no service of special kind was rendered to the rate-payers in the making of mutation entry in the assessment books of the corporation; that the corporation was not rendering any extra service to rate- payers in the matter of mutation which was a part of taxing process under the Act; that there was total absence of quid pro quo; that the levy was discriminatory as the incidence thereof was unequal on the persons falling within the same class; that there was no rational reason for imposing higher rate on purchasers vis-`-vis persons who became owners by way of intestate succession; that the levy based on ad valorem basis itself indicated that the corporation was trying to recover taxes in the garb of fees which it was not authorized to do and, therefore, the levy was ultra vires articles 14 and 246 of the Constitution. In the circumstances, it was submitted that no interference was called for in the impugned judgment of the High Court.

The Calcutta Municipal Corporation Act was enacted on 28.12.1981 to amend and consolidate the law relating to municipal affairs of Calcutta. Chapter IV deals with power and functions of the municipal authorities and the officers of the corporation. Section 29 deals with obligatory functions of the corporation and it lays down that the corporation shall having regard to the available resources provide civic services including water supply, sewerage and drainage to the rate- payers. One of the functions mentioned in section 29(z) is to compile and maintain records relating to the administration and functions of the corporation under the Act. Section 30 deals with discretionary functions of the corporation. Section 32 deals with authentication of the orders of the corporation. Part- III deals with Finance. Chapter VIII which falls

in part-III refers to the setting up of the municipal fund in five accounts, namely, water-supply account, road development and maintenance account, general account etc. Chapter XII deals with taxation. Under section 170, the corporation is empowered to levy a consolidated rate on lands and buildings. Under section 170(2), the levy, assessment and collection of taxes mentioned in section 170(1) is required to be done in accordance with the provisions of the Act and the rules made thereunder. Section 174 deals with determination of annual valuation. Section 178 deals with municipal assessment code. Section 179 deals with periodical assessment of lands and buildings situated in any ward of the corporation. Section 180 deals with revision of assessment. Section 181 deals with submission of returns for purposes of assessment. Under the said section, the municipal commissioner is authorized to call upon any person primarily liable for payment of consolidated rate of land or building to give such particulars as may be required to determine the annual value of such land or building. Section 182 deals with the submissions of returns for purposes of revision in the annual value of land and building. Section 183 is the section which deals with notice of transfers. Under section 183(1), whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of consolidated rate on such land or building, and the transferee to whom the title is transferred shall within the stipulated period give notice of such transfer to the municipal commissioner. Under section 183(2) in the event of the death of any person primarily liable, the transferee, on whom the title devolves, is required within the stipulated period to give notice of such devolution to the municipal commissioner. Under section 183(4), if the transferor fails to give notice, he is made liable to penalty. Further, he is also made liable for payment of consolidated rate on such land or building till he gives such notice to the municipal commissioner. Under section 183(5), it is further provided that the municipal commissioner shall on receipt of such notice of transfer or devolution of title record such transfer or devolution in the assessment book subject to payment of such fees as may be determined by the regulations. Section 185 deals with amendment of assessments. Section 186 deals with objections against valuation of assessment. Section 192 deals with amendment of municipal assessment book by insertion therein of the name of any person whose name ought to have been inserted or by striking out the name of any person not liable for payment of consolidated rate. Under section 602 of the Act, the corporation is empowered to make regulations not inconsistent with the provisions of the Act for discharging functions under the Act.

In exercise of the power conferred under section 602 read with section 183(5), the corporation with the approval of the State Government framed the following regulations called Calcutta Municipal Corporation (Taxation) Regulations, 1989, which are reproduced hereinbelow:

"REGULATIONS

1. (a) These regulations may be called "The Calcutta Municipal Corporation (Taxation) Regulations, 1989".

(b) They shall come into force on the date of their publication in the Official Gazette.

2. In these regulations, unless the context otherwise requires the "Act" means the Calcutta Municipal Corporation Act, 1980 (West Ben, Act LIX of 1980) and the other terms and expressions used herein and not defined shall have the same meaning as in the Act.

3. Fees for recording of transfer or devolution of title of any land or building under sub-section (5) of section 183 of the Act shall be as per Schedule below:-

SCHEDULE

1) In the case of transfer/agreement for sale or cost of acquisition or in the case where there is certificate or in the case of testamentary succession Amount of fee in rupees

(a) If the price/value of the property declared does not exceed rupees fifty thousand.

0.5% of the price/value

(b) Where such price/value exceeds rupees fifty thousand but does not exceed rupees one lakh.

1% of the price/value.

(c) Where such price/value exceeds rupees one lakh but does not exceed rupees three lakh.

1.5% of the price/value.

(d) Where such price/value exceeds rupees three lakhs but does not exceed rupees five lakhs.

2% of the price/value.

(e) Where such price/value exceed rupees five lakhs.

2.5% of the price/value.

(2) In the case of transfer by a deed of lease/sub- lease/assignment or such other similar instrument, the amount to be paid will be at the same rates as at (1) above, on the value shown in the document for Stamp Duty:

Provided that in calculating the amount of fee to be paid under (1) or (2) above any fraction of a rupee amounting to fifty paise or more shall be rounded off to the nearest rupee.

(3) In the case of intestate succession Amount of fee

(a) If the last decided annual valuation does not exceed rupees three thousand.

Rs.25

(b) If such valuation exceeds rupees three thousand but does not exceed rupees six thousand.

Rs.50

(c) If such valuation exceeds rupees six thousand but does not exceed rupees ten thousand.

Rs.100

(d) If such valuation exceeds rupees ten thousand but does not exceed rupees fifteen thousand.

Rs.200

(e) If such valuation exceeds rupees fifteen thousand Rs.250 In case of thika tenant/hut owner in a Bustee hut premises.

Rs.20"

The central point in the entire controversy is whether the impugned imposition is in the nature of a "fee" or a "tax".

According to "Words & Phrases", Permanent Edition, Vol. 41 Page 230, a charge or fee, if levied for the purpose of raising revenue under the taxing power is a "tax". Similarly, imposition of fees for the primary purpose of "regulation and control" may be classified as fees as it is in the exercise of "police power", but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a "tax". A tax is an enforced contribution expected pursuant to a legislative authority for purpose of raising revenue to be used for public or governmental purposes and not as payment for a special privilege or service rendered by a public officer, in which case it is a "fee". Generally speaking "taxes" are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are "fees" where they are imposed upon a person to defray the cost of particular services rendered to his account.

In the case of State of West Bengal v. Kesoram Industries Ltd. reported in [(2004) 10 SCC 201], the Constitution Bench of this Court while differentiating between the "power to regulate" and "power to tax" observed:

> "108. It is of paramount significance to note the difference between "power to regulate and develop" and "power to tax".

109. The primary purpose of taxation is to collect revenue. Power to tax may be exercised for the purpose of regulating an industry, commerce or any other activity; the purpose of levying such tax, an impost to be more correct, is the exercise of sovereign power for the purpose of effectuating regulation though incidentally the levy may contribute to the revenue. Cooley in his work on taxation (Vol.1, 4th Edn., 1924) deals with the subject in paras 26 and 27:

> "There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the State under which the public revenues are apportioned and collected. The reason is that the imposition has not for its object the raising of revenue but looks rather to the regulation of relative rights, privileges and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. This manifestation of the sovereign authority is usually spoken of as the police power. The power to tax must be distinguished from an exercise of the police power." [State v. Tucker 56 SC 516 : 35 SE 215].
>
> The police power "is a very different one from the taxing power, in its essential principles, though the taxing power, when properly exercised, may indirectly tend to reach the end sought by the other in some cases". (p.94) "The distinction between a demand of money under the police power and one made under the power to tax is not so much one of form as of substance." (p. 95). The distinction between a levy in exercise of police power to regulate and the one which would be in the nature of tax is illustrated by Cooley by reference to a licence. He says:
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> "So-called license taxes are of two kinds. The one is a tax for the purpose of revenue. The other, which is, strictly speaking, not a tax at all but merely an exercise of the police power, is a fee imposed for the purpose of regulation." (p.97) * * * "Suppose a charge is imposed partly for revenue and partly for regulation. Is it a tax or an exercise of the police power? Other considerations than those which regard the

> production of revenue are admissible in levying taxes, and regulation may be kept in view when revenue is the main and primary purpose. The right of any sovereignty to look beyond the immediate purpose to the general effect neither is nor can be disputed. The Government has general authority to raise a revenue and to choose the methods of doing so; it has also general authority over the regulation of relative rights, privileges and duties, and there is no rule of reason or policy in the Government which can require the legislature, when making laws with the one object in view, to exclude carefully from its attention the other. Nevertheless, cases of this nature are to be regarded as cases of taxation. If revenue is the primary purpose, the imposition is a tax. Only those cases where regulation is the primary purpose can be specially referred to the police power. If the primary purpose of the legislative body in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the public". (Cooley, ibid., pp.98-99)

110. This Court in a seven-Judge Bench decision in Synthetics and Chemicals Ltd. v. State of U.P. [(1990) 1 SCC 109] agreed that regulation is a necessary concomitant of the police power of the State. However, it was an American doctrine and in the opinion of the Court it was not perhaps applicable as such in India. The Court endorsed recognizing the power to regulate as a part of the sovereign power of the State exercisable by the competent legislature. Brushing aside the need for discussion on the question, whether under the Constitution the States have police power or not, the Court accepted the position that the State has the power to regulate. However in the garb of exercising the power to regulate, any fee or levy which has no connection with the cost or expenses of administering the regulation, cannot be imposed; only such levy can be justified as can be treated as part of regulatory measure. Thus, the State's power to regulate perhaps not as emanation of police power but as an expression of the sovereign power of the State has its limitations. In our opinion , these observations of the Court lend support to the view which we have formed that a power to regulate, develop or control would not include within its ken a power to levy tax or fee except when it is only regulatory. Power to tax or levy for augmenting revenue shall continue to be exercisable by the legislature in whom it vests i.e. the State Legislature in spite of regulation or control having been assumed by another legislature i.e. the Union. State legislation levying a tax in such manner or of such magnitude as can be demonstrated to be tampering or intermeddling with the Centre's regulation and control of an industry can perhaps be the exception to the rule just stated."

Therefore, the main difference between "a fee" and "a tax" is on account of the source of power. Although "police power" is not mentioned in the Constitution, we may rely upon it as a concept to bring out the difference between "a fee" and "a tax". The power to tax must be distinguished from an exercise of the police power. The "police power" is different from the "taxing power" in its essential principles. The power to regulate, control and prohibit with the main object of giving some special benefit to a specific class or group of persons is in the exercise of police power and the charge levied on that class to defray the costs of providing benefit to such a class is "a fee". Therefore, in the aforestated judgment in Kesoram's case, it has been held that where regulation is the primary purpose, its power is referable to the "police power". If the primary purpose in imposing the charge is to regulate, the charge is not a tax even if it produces revenue for the government. But where the government intends to raise revenue as the primary object, the imposition is a tax. In the case of

Synthetics & Chemicals Ltd. v. State of U.P. reported in [(1990) 1 SCC 109], it has been held that regulation is a necessary concomitant of the police power of the State and that though the doctrine of police power is an American doctrine, the power to regulate is a part of the sovereign power of the State, exercisable by the competent legislature. However, as held in Kesoram's case (supra), in the garb of regulation, any fee or levy which has no connection with the cost or expense of administering the regulation cannot be imposed and only such levy can be justified which can be treated as a part of regulatory measure. To that extent, the State's power to regulate as an expression of the sovereign power has its limitations. It is not plenary as in the case of the power of taxation.

These well settled principles have been reiterated by this Court in the case of Commissioner of Central Excise v. Chhata Sugar Co. Ltd. reported in [(2004) 3 SCC 466] in which it has been held:-

> "18. The Constitution of India postulates either a tax or a fee. However, the use of the expression "tax" or "fee" in a statute is not decisive; as on a proper construction thereof and having regard to its scope and purport "fee" may also be held to be a tax.
>
> 19. The definition of "tax" in terms of clause (28) of Article 366 of the Constitution is wide in nature. The said definition may be for the purpose of the Constitution; but it must be borne in mind that the legislative competence conferred upon the State Legislature or Parliament to impose "tax" or "fee" having been enumerated in different entries in the three lists contained in the Seventh Schedule of the Constitution of India, the same meaning of the expression "tax" unless the context otherwise requires should be assigned.
>
> 20. Having regard to the fact that different legislative entries have been made providing for imposition of "tax" and "fee"

separately, indisputably, the said expression do not carry the same meaning. Thus a distinction between a tax and fee exists and the same while interpreting a statute has to be borne in mind.

21. A distinction must furthermore be borne in mind as regards the sovereign power of the State as understood in India and the doctrine of police power as prevailing in the United States of America. In some jurisdictions a distinction may exist between a police power and a power to tax but as in the Constitution of India, the word "tax" is defined, it has to be interpreted accordingly.

22. The expression "regulatory fee" is not defined. Fee, therefore, may be held to be a tax if no service is rendered. While imposing a regulatory fee, although the element of quid pro quo, as understood in common parlance, may not exist but it is trite that regulatory fee may be in effect and substance a tax. [See: Corpn. of Calcutta v. Liberty Cinema (AIR 1965 SC 1107)].

23. In Municipal Corpn. Amritsar v.

Senior Supdt. of Post Offices [(2004) 3 SCC 92] it was held: (SCC p. 9-97, para 8) "8. The question, whether the demand so made was by way of `service charge or `tax', need not detain us any longer.

The demand so made was with regard to the services rendered to the respondents' Department, like water supply, street-lighting drainage and approach roads to the land and buildings. In the counter, the respondents averred that they are paying for the services rendered by the appellant separately. It is also categorically averred that no other specific services are being provided to the respondents for which the tax in the shape of service charges can be levied and realized from the respondents. There is no provision in the Municipal Corporation Act for levying services charges. The only provision is by way of tax. Undisputedly, the appellant Corporation is collecting the tax from general public for water supply, street- lighting and approach roads, etc. Thus, the `tax' was sought to be imposed in the garb of 'service charges'."

24. We may furthermore notice that a seven-Judge Bench of this Court in Synthetics and Chemicals Ltd. v. State of U.P. [(1990) 1 SCC 109] while considering the question as to whether the levy on industrial alcohol by the State is justifiable, inter alia, held that when revenue earned out of the impost is substantial, the same would not be justifiable as fee.

25. In Liberty Cinema this Court, while interpreting Section 548 of the Calcutta Municipal Act providing for grant of a licence, observed:

> (AIR p. 1116, para 18) "The reference to the heading of Part V can at most indicate that the provisions in it were for conferring benefit on the public at large. The cinema house owners paying the levy would not as such owners be getting that benefit. We are not concerned with the benefit, if any, received by them as members of the public for that is not special benefit meant for them. We are clear in our mind that if looking at the terms of the provision authorizing the levy, it appears that it is not for special services rendered to the person on whom the levy is imposed, it cannot be a fee wherever it may be placed in the statue. A consideration of where Sections 443 and 548 are placed in the Act is irrelevant for determining whether the levy imposed by them is a fee or a tax."

It was further observed: (AIR p.1116, paras 19-20) "19. The last argument in this connection which we have to notice was based on Sections 126 and 127 of the Act. Section 126 deals with the preparation by the Chief Executive Officer of the Corporation called Commissioner, of the annual budget. The budget has to include an estimate of receipts from all sources. These receipts would obviously include taxes, fees, licence fees and rents. Under Section 127(3) the Corporation has to pass this budget and to determine subject to Part IV of the Act, the levy of consolidated rates and taxes at such rates as are necessary to provide for the purposes mentioned in sub-section (4). Sub-section (4) requires the Corporation to make adequate and suitable provision for such services as may be required for the fulfilment of the several duties imposed by the act and for certain other things to which it is not necessary to refer. The first point made was that these sections showed that the act made a distinction between fees and taxes. It does not seem to us that anything turns on this as the only question now is whether the levy under Section 548 is a fee. The other point was that clauses (3) and (4) of Section 127 showed that the Corporation could fix the consolidated rates and taxes and that the determination of rates for these had to be in accordance with the needs for carrying out the Corporation's duties under the Act. It was said that as the licence fee leviable under

Section 548 did not relate to any duty of the Corporation under the Act, it being optional for the Corporation to impose terms for grant of licences for cinema houses, the rate for that fee was not to be fixed in reference to anything except rendering of services. We are unable to accept this argument and it is enough to say in regard to that it is not right that Section 443 does not impose a duty on the Corporation. We think it does so, though in what manner and when it will be exercised it is for the Corporation to decide. It is impossible to call it a power, as the respondent wants to do, for it is not given to the Corporation for its own benefit. The Corporation has been set up only to perform municipal duties and its powers are for enabling it to perform those duties.

Furthermore there is no doubt that an estimate of the licence fee has to be included in the budget and therefore the word 'tax' in Section 127(3) must be deemed to include the levy under Section 548. The words 'subject to the provisions of Part IV' in Section 127 (3) must be read with the addition of the words 'where applicable' .

20. The conclusion to which we then arrive is that the levy under Section 548 is not a fee as the Act does not provide for any services of special kind being rendered resulting in benefits to the person on whom it is imposed. The work of inspection done by the Corporation which is only to see that the terms of the licence are observed by the licensee is not a service to him. No question here arises of correlating the amount of the levy to the costs of any service. The levy is a tax. It is not disputed, it may be stated, that if the levy is not a fee, it must be a tax."

26. A regulatory statute may also contain taxing provisions.

27. The decisions of this Court point out towards the need of existence of the element of quid pro quo for imposition of fee; be it to the person concerned or be it to a group to which he belongs; irrespective of the fact as to whether the benefit of such service is received directly or indirectly.

28. The point at issue is required to be considered keeping in view the aforementioned legal position.

29. By reason of the provisions of the U.P. Sheera Niyantran Adhiniyam, 1964, the trade carried out by the respondents is sought to be regulated.

30. Some service, therefore, was required to be rendered by the State or the statutory authority to the owners of the factory producing molasses or the molasses industries generally if an impost by way of "fee" was to be levied."

Applying the above principles to the present case, we find enumeration of obligatory and discretionary functions of the corporation in sections 29 and 30 under which civic services are rendered to the rate-payers for which taxes are leviable as mentioned in section 170 of the Act. As stated above, the entire part-IV of the Act deals not only with the levy of taxes, they also deal with assessments, valuation, collection and recovery of taxes. The entire machinery for filing of returns, objections and inspection of records and properties comes under the part which deals with taxation. The maintenance of assessment books, annual reports, valuation reports etc. all come under the part

which deals with taxation. Section 183 which deals with notice of transfer also comes under the same part. It is true that under section 183(5), fees are payable for mutation as may be prescribed under the regulations, still as stated above, the primary object of such a charge is to augment the revenue and the levy of such a charge cannot be treated to be a part of the regulatory measure. Further, under the Regulations, the corporation while prescribing fees has levied fees on ad valorem basis which is one more circumstance to show that the impugned levy is in the nature of tax and not in the nature of a fee. Further, the quantum of levy indicates that it is a tax and not a fee. The analysis of the various provisions of the Act and the impugned regulations show that the impugned levy is in exercise of power of taxation under the said Act to augment the revenues primarily and not as a part of regulatory measure. As stated above, the purpose of mutation is to register the transfer in the records of the corporation which in turn would help the corporation to recover taxes from the existing tax payers. Therefore, no special benefit results to the transferee who is made statutorily liable to inform the corporation of the change, if any, in the name of the person primarily liable to pay the tax.

In the case of Nand Kishwar Bux Roy v. Gopal Bux Rai & others reported in [AIR 1940 Privy Council 93], the Court, while discussing the nature of mutation proceedings, observed:

> "Mutation proceedings are merely in the nature of fiscal inquiries, instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of the property may be put into occupation of it with the greater confidence that the revenue for it will be paid."

Therefore, it is clear that mutation enquiry is instituted in the interest of the corporation for tax purposes and not for the benefit of the tax payer.

Now coming to the question of challenge to the levy as arbitrary and discriminatory and violative of Article 14, we find that the functions of the corporation with regard to mutation remains the same, whether the applicant is a transferee under a conveyance or a lessee or a beneficiary under a will or an heir in the case of intestate succession. Once an application for mutation is made, the same is examined by the department and after hearing the objections, if any, the record is ordered to be changed. Ultimately, the exercise is for fiscal purpose. Similarly, the property valuation may be below Rs.50,000/- or above Rs.2 lacs, the function of the corporation in making the mutation entry remains the same. Similarly, whatever may be the cause of mutation, whether it is case of transfer or devolution, the activity of mutation remains constant in all the cases. The expenses incurred in all the cases also cannot vary, whatever be the value of the property or the cause of mutation. In the circumstances, there is no reason given for charging different rates depending on the value of the property and the cause of transfer. By doing so, the incidence of the levy falls differently on persons similarly situated resulting in violation of article 14 of the Constitution. Moreover, the quantum of fees is disproportionate to the so called "services" which is one more circumstance showing arbitrariness in the levy of such imposition. So far as article 14 is concerned, the Courts in India have always examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of legislation [See: Om Kumar v. Union of India reported in [(2001) 2 SCC 386].

Applying the said tests to the impugned levy, we find that the levy is irrational, arbitrary, discriminatory and beyond section 183(5) of the said 1980 Act.

Before concluding, we may point out that the entire argument advanced on behalf of the respondents herein was that the imposition was in the nature of a tax and not a fee and that the said imposition was arbitrary, discriminatory, irrational and ultra vires article 14 of the Constitution. There was no challenge to the power of the State to levy mutation fees under section 183(5) of the said 1980 Act (as amended). In the case of Narendra Kumar & Others v. Union of India & Others reported in [AIR 1960 SC 430], one of the arguments advanced on behalf of Union of India was that since the petitioner Narendra Kumar had conceded the competency of the Central Government to make a Control Order under section 3 of the Essential Commodities Act, 1955, it was not open to him to submit that the said section 3 was ultra vires articles 19(1)(f) and 19(1)(g). In the said case, the controversy was whether the Non-ferrous Metal Control Order issued by the Central Government under section 3 of the Essential Commodities Act fell within the saving provisions of articles 19(5) and 19(6) of the Constitution. Therefore, the Court was required to examine whether the Control Order violated the fundamental rights of the citizen and, if so, whether the law was saved by articles 19(5) and 19(6). In the light of the said controversy, this Court while rejecting the contention of Union of India examined the question of validity of section 3 of Essential Commodities Act, though it was not specifically challenged. Therefore, the ratio of the decision in Narendra Kumar's case (supra) has no application to the facts of the present case.

For the aforestated reasons, we find no infirmity in the impugned judgment and accordingly, the civil appeals herein stand dismissed, with no order as to costs. However, our order of dismissal of IA No.1 of 2004 in Civil Appeal No.6121 of 2000 passed on 23.2.2005 will not preclude the Intervener(s) from claiming refund in accordance with law.