

Uttar Pradesh Municipalities Act, 1916

2 of 1916

[11 May 1916]

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SCHEDULE 9 :- SCHEDULE IX

Uttar Pradesh Municipalities Act, 1916

2 of 1916

[11 May 1916]

An Act to consolidate and amend the law relating to Municipalities in the Whereas, it is expedient to consolidate and amend the law relating to Municipalities in the It is hereby enacted as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extant And Commencement :-

(1) This Act may be called the 4 [Uttar Pradesh] Municipalities Act, 1916. 5 [(2) It shall extend to the whole of Uttar Pradesh.]

(3) It shall come into force on the first day of July, 1916. NOTE Constitutional Instrumentalities - In the case of Ahmedabad Municipal Corporation, 6 the Apex Court has held that the Gram Panchayats, the Zila Parishads and Municipalities are local bodies, Parts IX and IX-A of the Constitution have brought, through Articles 243 to 243-ZG, the Panchayats, Zila Parishads and Municipalities as constitutional instrumentalities to elongate the socio-economic and political democracy under the rule of law, Articles 243-G and 243-W enjoin preparation of plans for economic development and social justice. The State i.e., the Union of India,

the State Governments and the local bodies constitute an integral executive to implement the directive principles contained in Part IV through planned development under the rule of law. The appellant-Corporation, therefore, has Constitutional duty and authority to implement the directives contained in Articles 38, 39 and 46 and all cognate provisions to make the fundamental rights available to all the citizens as meaningful. It would, therefore, be the duty of the appellant to enforce 1 Received the assent of Lieutenant Governor on 11.05.1916 and of the Governor-General on 15.06.1916, and was published under Sec. 81 of the Government of India Act, 1915 on 24.06.1916. 2 Subs. by Sec. 32 of U.P. Act No. 26 of 1995, for "United Provinces" 3 Subs. by ibid. 4 Subs. by ibid. 5 Subs. by A.L.O. 1950. 6 AIR 1997 SC 152. the schemes in a planned manner by annual budgets to provide right to residence to the poor.

2. Definitions :-

In this Act unless there is something repugnant in the subject or context,- 2 [(1) "Backward Classes" means the backward classes of citizens specified in Schedule 1 of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994;] 3 [(2) "Buildings" means a house, out-house, stable, shed, hut or other enclosure or structure whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as a human dwelling or otherwise, and includes any verandah, platform, plinth, staircase, door step, wall including compound wall other than a boundary wall of a garden or agricultural land not appurtenant to a house but does not include a tent or other such portable temporary shelter;]

(3) "Bye-law" means a bye-law made in exercise of a power conferred by this Act.

(4) 4 [* * *]

(5) "Compound" means land, whether enclosed or not which is the appurtenance of a building or the common appurtenance of several buildings; 5 [(5-A) "Director" means the Director of Local Bodies, Uttar Pradesh appointed under Section 31-B;] 6 [(5-AA)"District Planning Committee" means the District Planning Committee constituted under Article 243-ZD of the Constitution;]

(6) "Drain" includes a sewer, pipe, ditch, channel or any other device for carrying of sullage sewage and polluted water, or rain water or subsoil water, together with pail depots, traps, sinks cisterns flush, tanks and other fittings appertaining thereto; 7 [(6-

A) "Finance Commission" means the Finance Commission 8

[constituted under] Article 243-I of the Constitution;] 1 Anugrah Narian Singh V. State of U.P., (2006) 1 SAC 1. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1964. 4 Omitted by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 41 of 1976. 6 Ins. by U.P. Act No. 12 of 1994. 7 Ins. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 26 of 1995.(7) "Inhabitant" used with reference to a local area means by person ordinarily residing or carrying on business or owning or occupying immovable property therein;

(8) "Lodging house" includes a collection of buildings, or a building or part of a building used for the accommodation of pilgrims and travelers; 1 [(8-A) "Master Plan" means a comprehensive plan showing therein the existing and proposed local and general layout of -

(a) arterial streets and transportation lines;

(b) residential sections;

(c) business areas;

(d) industrial areas;

(e) educational institutions;

(f) public parks, play-grounds and other recreational places;

(g) public and semi-public buildings; and

(h) any other places put to any specified used;] 2 [(9) "Municipality" means an institution of self-Government 3 [referred to in clause

(e) of Article 243-P of the Constitution];

(9-A) "Municipal Area" means the territorial area of a municipality 4 ;[* * *] 5 [(9-B) "Municipal Council" means the Municipal Council constituted under sub-clause (b) of clause (1) of Article 243-Q of the Constitution;

(9-C) "Nagar Panchayat" means the Nagar Panchayat constituted under sub-clause (a) of clause (1) of Article 243-Q of the Constitution;]

(10) "Notification" means a notification published in the Official Gazette;

(11) "Occupier" includes an owner in actual occupation of his own land or building;

(12) "Officer of the 6 [Municipality]" means a person holding for the time being an office created or continued by or under this Act, but shall 1 Added by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1995. 4 Omitted by U.P. Act No. 26 of 1995. 5 Subs. by U.P. Act No. 26 of 1995. 6 Subs. by U.P. Act No. 12 of 1994.not include a member of the 1

[Municipality] or of a committee as such;

(13) "Owner" includes a person for the time being receiving or entitled to receive the rent, or a part of the rent, of any land or building, whether on his own account or as trustee, or as agent for a person or for a religious or charitable purpose, or as receiver appointed by or under the order of Court or who would so receive the same if the land or building were let to a tenant; 2 [(13-A) "Panchayat" means a panchayat referred to in clause (f) of Article 243-P of the Constitution;]

(14) "Part of building" includes any wall, underground room or passage, verandah, fixed platform, plinth, staircase or doorstep attached to, or within the compound of a existing building, or constructed on ground which is to be the site or compound of a projected building;

(15) "Petroleum" means the petroleum as defined in the Indian Petroleum Act, 1849 3 ; 4 [(16) "Population" means population as ascertained at the last preceding census of which the relevant figures have been published;]

[(17) (i) "Prescribed" means prescribed by or under this Act or rules made thereunder or by or under any other enactment;

(ii) "Prescribed authority" means an officer or a body corporate appointed by the State Government in this behalf by notification in the Official Gazette and, if no such officer or body corporate is appointed, the Commissioner;]

(18) "Public Place" means a space, not being private property which is open to the use or enjoyment of the public whether such space is vested in the 6 [Municipality] or not;

(19) "Public street" means a street -

(a) which is declared a public street by the 7 [Municipality] under the provisions of Section 22], or 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 12 of 1994. 3 See now Petroleum Act, 1934 (Act No. 30 of 1934). 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.

(b) which with the consent, express or implied, of the owner of the land comprising the street has been leveled, paved, metalled, channelled severed or repaired out of the municipal or other public funds;

(20) "Regulation" means a regulation made in exercise of a power conferred by this Act;

(21) "Rule" means a rule made in exercise of a power conferred by this Act; 1 [(21-A) the expression "Scheduled Bank" shall have the

meaning assigned to it in the Reserve Bank of India Act, 1934;]

(22) "Servant of the 2 [Municipality]" means any person in the pay and service of the 3 [Municipality]; 4 [(22-A) "Smaller urban area" means an area notified as such under clause (2) of Article 243-Q of the Constitution;] 5 [(22-B) "State Election Commission" means the State Election Commission 6 [constituted under] Article 243-K of the Constitution;]

(23) "Street" means any road, bridge, footway, lane, square, court, alley or passage which the public or any portion of the public, has right to pass along and includes, on either side, the drain or gutters and the land upto the defined boundary of any abutting property, notwithstanding the projection over such land of any verandah or other superstructure; 7 [(23-A) "Transitional area" means an area in transition from a rural area to an urban area notified as such under clause (2) of Article 243-Q of the Constitution;]

(24) "Vehicle" means a wheeled conveyance capable of being used on a street, and includes a bicycle, tricycle 8 [or motor vehicle as defined in the 9 United Provinces Motor Vehicle Taxation Act, 1935 (U.P. Act No. 5 of 1935)]; 10 [(24-A) "Wards Committee" means the Wards Committee 11 [referred to in Article 243-S of the Constitution]; 1 Ins. by U.P. Act No. 1 of 1955. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1995. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1995, for "referred to in". 7 Subs. by U.P. Act No. 26 of 1995. 8 Subs. by U.P. Act No. 5 of 1935. 9 See now U.P. Motor Vehicles Taxation Act, 1997 (U.P. Act No. 21 of 1997). 10 Ins. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 26 of 1995.

(25) "Water for domestic purposes" shall not include water for cattle, or for horses, for washing carriages, where the cattle, horses or carriages are kept for sale or hire 1 [or for any other commercial purpose] or by a common carrier, or water for any trade, manufacture, or business or for building purpose or for watering gardens 2 [not appurtenant to any dwelling house], or for fountains or for any ornamental purpose;

(26) "Water works" includes all lakes, tanks, streams, cisterns, springs, pumps, wells, reservoirs, aqueducts, cuts, sluices, mains, pipes, culverts, engines, hydrants, stand-pipes, conduits and all machinery, lands, buildings, bridges and things for supplying of used for supplying water;

(27) where a power is expressed as being conferred on any authority to require a person to do one thing or to do another thing, the authority may, in its discretion require the person to do

either thing, or if, the nature of the case permits, both of the things, or may give the person the option of doing whichever of the things he chooses. NOTES Advertisement - Meaning of, - Notice given in a manner designed to attract public attention. Edwards V. Lubbock County. 3 Information communicated to the public, or to an individual concerned, as by handbills, newspaper, television, billboards, radio. First Nat. Corpn. V. Perrine. 4 An advertisement is a matter that draws attention of the public or a segment of the public to a product, service, person, organization or line of conduct in a manner calculated to promote or oppose directly or indirectly that product, service, person, organization or line of conduct intended to promote sale or use of product or range of products. An advertisement is generally of goods and services and is an information intended for the potential customers and not a mere display of the name of the company unless the same happens to be a trade mark or trade name. 5 Building - Meaning of, - A perusal of the definition of the terms "building" shows that the definition is widely worded. It includes within its ken even enclosures or structures whether of masonry, etc. or otherwise including compound walls. A basement situated at the bottom of the building though meant to be utilized as a parking space would definitely be covered by the definition of the term "building" and hence would be liable to general tax. 6 1 Ins. by U.P. Act No. 26 of 1964. 2 Ins. by U.P. Act No. 26 of 1964. 3 Tex Civ. App. 33, SW 2d 482. 4 99 Mont 454, 43 P 2d 1073, 1077. 5 ICICI Bank V. Municipal Corporation of Greater Bombay, (2005) 6 SCC 404. 6 Arvindbhai Narottam Shah V. Municipal Corpn. Of City of Ahmedabad, (2003) 12 SCC 171. Bungalow - Meaning of, - The word bungalow, normally and apparently cannot be extended to cover multistoried complex. The word bungalow is defined as a "one story house, lightly built" and cannot partake a shape of a duplex unit. 1 1 Vivek Srivastava V. Union of India and others, (2005) 2 SAC 237.

CHAPTER 2

CONSTITUTION AND GOVERNANCE OF MUNICIPALITIES

3. Declaration Etc. Of Transitional Area And Smaller Urban Area :-

- (1) Any area specified by the Governor in a notification under clause (2) of Article 243-Q of the Constitution with such limits as are specified therein to be a transitional area or a smaller urban area, as the case may be.
- (2) The Governor may, by a subsequent notification under clause

(2) of Article 243-Q of the Constitution, include or exclude any area in or from a transitional area or a smaller urban area referred to in sub-section (1), as the case may be.]

(3) 4 [The notification referred to in sub-section (1) and (2) shall be subject to the condition of the notification being issued after the previous publication required by Section 4 and notwithstanding anything in this section, no area which, or is part, a cantonment shall be declared to be transitional area or a smaller urban area or be included therein under this section.]

3A. Municipality For Every Transitional Area And Smaller Urban Area :-

[(1) A municipality constituted under clause (1) of Article 243-Q of the Constitution in accordance with Part IX-A thereof shall, -

(a) for every transitional area, be known as the Nagar Panchayat;

(b) for every smaller urban area be known as the Municipal Council.]

(2) Every Nagar Panchayat or Municipal Council constituted under subsection(1), shall be a body corporate.

(3) Notwithstanding anything, in sub-section (1), -

(a) every Municipal Board existing immediately before the commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994, shall 7 [from such commencement and until the first constitution of the Municipal Council under this Act as amended by the said Act] be deemed to be a Municipal Council under the Act;

(b) every notified area committee constituted under Section 338 or Town Area Committee constituted under the Uttar Pradesh Town Areas Act, 1914, as it stood immediately before the 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1995. 4 Subs. by U.P. Act No. 26 of 1995. 5 Ins. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1995. 7 Subs. by U.P. Act No. 26 of 1995, for "on such commencement". commencement of the Act referred to in clause (a), shall 1 [from such commencement and until the first constitution of the Nagar Panchayat under this Act, as amended by the Act referred to in clause (a)] be deemed to be a Nagar Panchayat under this Act].

3B. Constitution And Composition Of Wards Committees :-

(1) Each Wards Committee constituted under Clause (1) of Article 243-S of the Constitution within the territorial area of Municipal Council, having a population of three lakhs or more, shall consist of five wards.

(2) The territorial area of a Wards Committee shall consist of the territorial area of the wards comprised in such Committee.

(3) Each Wards Committee shall consists of, -

(a) all the members of the Municipal Council representing the wards within the territorial area of the Wards Committee;

(b) such other members, not exceeding three as may be nominated by the State Government from amongst persons registered as electors within the territorial area of the concerned Wards Committee who have special knowledge or experience in municipal administration.

(4) The Wards Committee shall, at its first meeting after its constitution and at its first meeting in the same month in each succeeding year, elect one of the members, mentioned in clause (a) of sub-section (3), as the Chairperson of that Committee.

(5) The duration of the office of the Chairperson shall be one year but he shall hold

office until his successor is elected and shall be eligible for re-election.

(6) The Chairperson shall vacate office as soon as he ceases to be a member of the Municipal Council;

(7) In the event of the office of the Chairperson falling vacant, due to resignation or otherwise, before the expiry of his term the Wards Committee shall, as soon as may be on the occurrence of the vacancy, elect a new Chairperson in accordance with sub-section (4); Provided that a Chairperson so elected shall hold office only for the remainder of the period for which the person in whose place he is elected would have held it if such vacancy had not occurred.

(8) The duration of the Wards Committee shall be co-terminous with the term of the Municipal Council. 1 Subs. by U.P. Act No. 26 of 1995, for "on such commencement". 2 Subs. by U.P. Act No. 26 of 1995.

(9) Subject to the provisions of this Act, the Wards Committee shall exercise such powers and perform such functions as may be prescribed by rules.]

4. Preliminary Procedure To Issue Notification :-

1 [(1) Before the issue of a notification 2 [referred to in Section 3], the 3 [Governor] shall publish in the Official Gazette 4 [and in a paper approved by it for purposes of publication of public notices, published in the district or, if there is no such paper in the district, in the division in which the local area covered by the notification is situate] and cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned a draft in Hindi or the proposed notification along with a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice.]

(2) The 5 [Governor] shall, before issuing the notification consider any objection or suggestion in writing which it receives from any person, in respect of the draft 6 [within the period stated].

5. Effect Of Including Area In Transitional Area Or Smaller Urban Area :-

Where by a notification referred to in sub-section (2) of Section 3 the Governor includes any area] in a 9 [transitional area or smaller urban area], 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 throughout the 10 [transitional area or smaller urban area], at the time immediately preceding the inclusion of the area. The 11 [Municipality]

6. Section 6 :-

* * *]

7. Duties Of Municipality :-

(1) It shall be the duty of every 2 [Municipality] to make

reasonable provision 3 [within the municipal area for],-

- (a) lighting public street and places; 1 Subs. by U.P. Act No. 1 of 1955. 2 Subs. by U.P. Act No. 26 of 1995. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 1 of 1955. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 26 of 1995. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Omitted by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1995, for "within the municipality for".
- (b) watering public streets and places; 4 [(bb) making a survey, and erection of boundary marks, of the Municipality;]
- (c) cleaning public streets, places and drains, removing noxious vegetation, and abating all public nuisances;
- (d) regulating offensive, dangerous or obnoxious trades, calling or practices; 5 [(dd) confinement, removal or destruction of stray dogs and dangerous animals;]
- (e) removing, on the ground of public safety, health or convenience, undesirable obstructions and projection in streets or public places;
- (f) securing or removing dangerous buildings or places;
- (g) acquiring, maintaining, changing, and regulating places for the disposal of the dead 6 [and making arrangements for disposal of unclaimed dead bodies after ascertaining from the police in writing that there is no objection to do so;]
- (h) constructing, altering and maintaining public streets, culverts, markets, slaughter-houses, latrines, privies, urinals, drains, drainage works and sewerage works; 7 [(hh) reclaiming unhealthy localities;]
- (i) Planting and maintaining trees on road sides and other public places; 8 [(ii) providing water supply for domestic, industrial and commercial purposes;]
- (j) providing a sufficient supply of pure and wholesome water where the health of the inhabitants is endangered by the insufficiency or unwholesomeness of the existing supply, guarding from pollution water use for human consumption and preventing polluted water from being so used; 1 [(jj) maintaining in addition to any other source of water supply, public wells, if any, in working condition, guarding from pollution their water and keeping it fit for human consumption;] 4 Ins. by U.P. Act No. 26 of 1964. 5 Ins. by U.P. Act No. 26 of 1964. 6 Ins. by U.P. Act No. 26 of 1964. 7 Ins.

by U.P. Act No. 26 of 1964. 8 Ins. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964.(k) registering births and deaths; (l) establishing and maintaining a system of public vaccination; (m) establishing maintaining or supporting public hospitals and dispensaries, and providing public medial relief; 2 [(mm) establishing, maintaining and assisting maternity centers and child welfare and birth control clinics and promoting population control, family welfare and small family norms;] 3 [(n) maintaining or contributing to the maintenance of veterinary hospitals;] 4 [(nn) establishing and maintaining or guaranteeing aid to institutions of physical culture;] 5 [(o)] establishing and maintaining primary schools; 6 [(p)] rendering assistance in extinguishing fires and protecting life and property when fires occur; 7 [(q) protecting, maintaining and developing the property vested in, or entrusted to the management of the 8 [Municipality];] 9 [(qq) maintaining the finances of the 10 [Municipality] in satisfactory condition and meeting its liabilities;] 11 [(r)] 12 [prompt attention to official letters and preparation of] such returns, statements and reports as the 13 [State Government] requires the 14 [Municipality] to submit; and 1 [(s)] fulfilling any obligation imposed by law upon it; 2 [(t) regulating tanneries;

(u) construction and maintenance of parking lots, bus stops and public conveniences; 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 5 of 1932. 4 Ins. by U.P. Act No. 7 of 1949. 5 Re-numbered by U.P. Act No. 5 of 1932. 6 Re-numbered by U.P. Act No. 5 of 1932. 7 Subs. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. 9 Ins. by U.P. Act No. 26 of 1964. 10 Subs. by U.P. Act No. 12 of 1994. 11 Re-numbered by U.P. Act No. 5 of 1932. 12 Subs. by U.P. Act No. 17 of 1934. 13 Subs. by ALO 1950. 14 Subs. by U.P. Act No. 12 of 1994. 1 Re-numbered by U.P. Act No. 5 of 1932. 2 Ins. by U.P. Act No. 12 of 1994.(v) promoting urban forestry and ecological aspects and protection of the environment;

(w) safeguarding the interests of weaker sections of society including the handicapped and mentally retarded;

(x) promoting cultural, educational and aesthetic aspects;

(y) constructing and maintaining cattle pounds and preventing cruelty to animals;

(z) slum improvement and upgradation;

(za) urban poverty alleviation;

(zb) providing urban amenities and facilities such as gardens, public parks and play grounds.]

(2) 3 [* * *]

8. Discretionary Functions Of Municipalities :-

(1) A [Municipality] may make provision, within the limits of the municipality 6 [and with the sanction of the 7 [Prescribed Authority] outside such limits] for -

(a) laying out, in areas whether previously built upon or not, new public streets and acquiring land for that purpose and for the construction of buildings, and their compounds, to abut on such streets; 8 [(aa) preparing and executing Master Plan;]

(b) constructing, establishing, maintaining 9 [or contributing to the maintenance of] 10 [* * *] libraries, museum, 11 [reading rooms, radio receiving stations, lepers homes, orphanages, baby-folds and rescue homes for women], lunatic asylums, halls, offices, dharamshalas, rest-houses, encamping grounds, poor-houses, dairies, baths, bathing ghats, washing places, drinking fountains, tanks, wells, dams and other works of public utility;

(c) 1 [* * *] 3 Omitted by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by Sec. 2 of U.P. Act No. 2 of 1919. 7 Subs. by U.P. Act No. 7 of 1949 for "Commissioner". 8 Ins. by U.P. Act No. 26 of 1964. 9 Ins. by U.P. Act No. 7 of 1949. 10 Omitted by U.P. Act No. 12 of 1994. 11 Ins. by U.P. Act No. 7 of 1949. 1 Omitted by U.P. Act No. 26 of 1964.(d) furthering educational objects by measures other than the establishment and maintenance of primary schools;

(e) taking a census, and granting rewards for information which may tend to secure the correct registration of vital statistics; 2

[(ee) granting rewards for information leading to the detection of evasion of tax imposed under this Act, or the detection of the causing of injury to or encroachment on property vested or entrusted to the management and control of the 3 [Municipality;]

(f) 4 [* * *]

(g) giving relief on the occurrence of local calamities, by the establishment and maintenance of relief works or otherwise;

(h) 5 [* * *]

(i) securing or assisting to secure suitable places for the carrying on of any trade or manufacture mentioned under sub-head

(a) of heading G of Section 298;

(j) establishing and maintaining a farm or factory for the disposal of sewage; 6 [(jj) making arrangements for preparation of compost manure from nightsoil and rubbish;]

(k) constructing, subsidizing or guaranteeing tramways, railroads or other means of locomotion and electric or gas lighting or electric or gas power works; 7 [(kk) promoting tourist traffic;]
 (l) holding fairs and exhibitions; 8 [* * *] 9 [(ll) preparing and executing House and Town Planning Schemes;
 (lll) taking measures to promote trade and industry;
 (llll) supply of milk;
 (lllll) establishing Labour Welfare Centres for its employees and subsidizing the activities of any association, union or club of such employees by grant or loan, for its general advancement;
 (lllll) organizing or contributing to 1 [Municipality] Unions;] 2 Added by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Omitted by U.P. Act No. 26 of 1964. 5 Omitted by U.P. Act No. 26 of 1964. 6 Ins. by U.P. Act No. 7 of 1953. 7 Ins. by U.P. Act No. 26 of 1964. 8 The word "and" omitted by U.P. Act No. 2 of 1919. 9 Ins. by U.P. Act No. 7 of 1949.(m) adopting any measure, other than a measure specified in Section 7 or in the foregoing provisions of this section likely to promote the public safety, health, or convenience; 2 [and] 3 [(mm) removing social disabilities of Scheduled Castes and Backward Classes in such manner as may be prescribed;] 4 [(mmm) taking measures for the control of beggary;] 5 [(n) the doing of anything whereon expenditure is declared by the 6 [State Government] or by the 7 [Municipality with the sanction] of the 8 [Prescribed Authority] to be an appropriate charge on the Municipal fund;] 9 [Provided that the 10 [State Government] may in respect of any Municipality or all Municipalities, by notification in the Official Gazette, declare any of the functions mentioned in this section to be a duty of Municipality or 11 [Municipalities] concerned and thereupon the provisions of this act shall apply thereto as if it had been duty imposed by Section 7.]

(2) A 12 [Municipality] may make provision for the extension beyond the limits of the municipality of the benefits of any municipal undertaking : Provided that no provision shall be made for the extension of the benefits of a municipal undertaking for the supply of water to any local area which comprises or contains the whole or a portion of a cantonment without the previous sanction of the 13 [Central Government].

(3) 14 [* * *] NOTE Municipalities - Responsibility of Town Planning - The Municipalities have constitutional responsibilities of town planning. The Municipal Corporation has the responsibility in respect of matters enumerated in the Twelfth Schedule of the 1

Subs. by U.P. Act No. 12 of 1994. 2 Added by U.P. Act No. 2 of 1919. 3 Subs by U.P. Act No. 26 of 1964. 4 Ins. by U.P. Act No. 7 of 1949. 5 Added by U.P. Act No. 2 of 1919. 6 Subs by ALO 1950. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 7 of 1949. 9 Ins. by U.P. Act No. 7 of 1949. 10 Subs. by ALO 1950. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by ALO 1937. 14 Omitted by U.P. Act No. 2 of 1919. Constitution of India, regulation of land use, public health, sanitation, conservancy solid-waste management being some of them. 1 8-A. 2 [* * *]

9. Composition Of Municipality :-

(1) A Municipality shall consist of a President, who shall be its Chairperson, and, -

(a) the elected members, whose number shall, -

(i) in the case of a Nagar Panchayat, be not less than 10, and not more than 24; and

(ii) in the case of a Municipal Council, be not less than 25 and not more than 55, as the State Government may, by notification in the Official Gazette specify;

(b) the ex-officio members, comprising all members of the House of the People and the State Legislative Assembly representing constituencies which comprise wholly or partly the municipal area;

(c) the ex-officio members, comprising all members of the Council of States and the State Legislative Council who are registered as electors within the municipal area;

(d) nominated members, who shall be nominated by the State Government, by notification in the Official Gazette, from amongst having special knowledge or experience in municipal administration and whose numbers shall in the case of -

(i) Nagar Panchayat, be not less than two and not more than three;

(ii) Municipal Council, be not less than three and not more than five;

(e) the Chairperson of the committee, if any, established under Section 104, if they are not members under any of the foregoing clauses : 1 [Provided that the persons referred to in clause (d) shall hold office during the pleasure of the State Government and they shall have the right to vote in the meetings of the Municipalities.] 1

M.C. Mehta V. Union of India, (2004) 6 SCC 588. 2 Omitted by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by Sec. 4 of U.P. Act No. 8 of 2005. Provided further that any vacancy

in any category of members referred to in clauses (a) to (e) shall be no bar to the constitution or reconstitution of a municipality.] [UTTARAKHAND] 2 AMENDMENT 3 [(a) The elected members, whose numbers shall be not less than 4 and not more than 45, as may be prescribed by the State Government and notified in the Official Gazette;] NOTES Membership of Municipal Board. - By virtue Section 9(d), members of the council of states (Rajya Sabha) and the state legislative council, "who have their residence within the limits of the municipality" become the members of the Board (Nagar Palika). The explanation to clause (d), elucidates the meaning of the expression residence. The object and purpose of the explanation is to fix the residence of a member of the Rajya Sabha or State Legislative Council as the one mentioned in the notification of his election (if he is an elected member) or in notification of his nomination (if he is a nominated member) for the purpose of the U.P. Municipalities Act, it is said residence which is relevant and determines their membership in a particular Municipal Board (Nagar Palika). 4 Class of members. - There are four classes of members as specified in subsection (a), (b), (c) and (d) of Section 9 of the said Act. The members as enumerated in Section 9 includes not only the elected members but also ex-officio members as contemplated by sub-section (c) and (d) of Section 9 of the said Act, it also includes the nominated members. Under the proviso to Section 9 of the said Act, it has been specifically provided that if none of the members elected under clause (b) is a woman, the State Government may, by a like notification nominate one woman as a member of the Board and thereupon, the normal composition of the Board shall stand varied to that extent. 5 Right to vote. - Nominated members have been made ineligible for voting in the meetings of the municipality vide proviso to Section 9(1)(e) of the Act. 6 Composition of Municipality. - Article 243-R brought about a drastic change in the matter of composition of Municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a Municipality. Under the said Act, members of a Municipality are person chosen by direct election by the residents of a municipal area (ward). Article 243-R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the Board who has special 2 The word "Uttaranchal" subs. by Act No. 52 of 2006. 3 Subs. by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). 4 Amir Ahmed V. Ram Niwas Agarwal, 1994 (Supp) RD 192. 5 Sudesh Kumar V. Krishna Kumar Mittal, 1990 RD 66. 6 Raees Ahmad V. State of U.P., 1999(90) RD 142. knowledge in the

field of municipal administration, however, the proviso appended to the said article precludes persons nominated under sub-clause (1) from having a right to vote in the meetings of the Municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role.

9A. Reservation Of Seats :-

(1) In every municipality seats shall be reserved for the 3 [Scheduled Castes, the Scheduled Tribes and the Backward Classes] and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area 4 [or of the Backward Classes in the Municipal area] bears to the total population of such area and such seats may be allotted by rotation to different wards in a municipality in such order as may be prescribed by rules: 5 [Provided that the reservation for the backward classes shall not exceed twenty seven per cent of the total number of seats in the municipality. Provided further that if the figures of population of the backward classes are not available, their population may be determined by carrying out a survey in the manner prescribed by rules.]

(2) 6 [* * *]

(3) Not less than one-third of the total number of seats reserved under 7 [subsection (1)] shall be reserved for the women belonging to the Scheduled Castes, the Scheduled Tribes or the Backward Classes, as the case may be.

(4) Not less than one-third of the total number of seats in a municipality including the number of seats reserved under sub-section (3) shall be reserved for women and such seats may be allotted by rotation to different wards in a municipality in such order as may be prescribed by rules. 1 [(5) The offices of President and Vice-President of the Municipal Council and Nagar Panchayat shall be reserved and allotted for the Scheduled Castes, the Scheduled Tribes and the Backward Classes and Women, in the manner given below:- 1 Ramesh Mehta V. Sanwal Chand Singhvi, (2004) 5 SCC 409. 2 Subs. by U.P. Act No.12 of 1994. 3 Subs. by U.P. Act No. 26 of 1995. 4 Ins. by U.P. Act No. 26 of 1995. 5 Ins. by U.P. Act No. 26 of 1995. 6 Omitted by U.P. Act No. 26 of 1995. 7 Subs. by U.P. Act No. 26 of 1995. 1 Subs. by U.P. Act No. 25 of 2006.(1) Reservation and allotment of offices of the President. -

(a) The reservation and allotment of offices of the President under this sub-section, shall be done separately for the Municipal Councils and Nagar Panchayats in the manner hereinafter provided.

(b) The number of offices to be reserved -

(i) for the Scheduled Castes or for the Scheduled Tribes or for the backward classes shall be determined in the manner that it shall bear, as nearly as may, the same proportion to the total number of offices in the State as population of the Scheduled Castes in the urban area of the State, or of the Scheduled Tribes in the urban area of the State, or of the backward classes in the urban area of the State bears to the total population of such area in the State and if in determining such number of offices, there comes a remainder then, if it is half or less than half of the divisor, it shall be ignored and if it is more than half of the divisor, the quotient shall be increased by one and the number so arrived at shall be the number of offices to be reserved for the Scheduled Castes or the Scheduled Tribes or the backward classes, as the case may be : Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the total number of offices in the State;

(ii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub-section (3) shall not be less than

one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining such number of offices there comes a remainder than the quotient shall be increased by one and the number so arrived at shall, as the case may be, the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes : Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the total number of offices in the State;

(iii) for the women belonging to the Scheduled Castes, the Scheduled Tribes and the backward classes, as the case may be, under sub-section (3) shall not be less than one-third of the number of offices for the Scheduled Castes, Scheduled Tribes and for the backward classes and if in determining such number of offices there comes a remainder then the quotient shall be increased by one and number so arrived at shall, as the case may be, the number of offices be reserved for women belonging to the Scheduled Castes, Scheduled Tribes and backward classes.

(c) All Municipal Councils and Nagar Panchayats of the State shall be arranged in such serial order that the Municipal Councils or Nagar Panchayats having largest percentage of population of Scheduled Castes in the State, shall be placed at Serial Number 1 and Municipal Councils or Nagar Panchayats having lesser population of the Scheduled Castes than those shall be placed at number 2 and the rest shall likewise be placed respectively at succeeding numbers.

(d) Subject to item (ii) of sub-clause (b) the number of offices of the Presidents determined under sub-clause (b) for Municipal Councils or the Nagar Panchayats of the State shall be allotted to different Municipal Councils or Nagar Panchayats in the State, as the case may be, in the manner that -

(i) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Castes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the Scheduled Castes, shall be allotted to Scheduled Castes next to the Municipal Council or Nagar Panchayat placed at Serial No. 1 under sub-clause (c) : Provided that such Municipal Council or Nagar Panchayats shall be first allotted to the women belonging to the Scheduled Castes :

(ii) the number of offices determined under item (i) of sub-clause (b) for the offices of Scheduled Tribes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the Scheduled Tribes allotted to Scheduled Tribes serial-wise next to the last serial allotted under item (i) : Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the Scheduled Tribes.

(iii) the number of offices determined under item

(i) of sub-clause (b), for the offices of backward classes including the number of offices determined under item (ii) of the said sub-clause for the women belonging to the backward classes shall be allotted to backward classes serial-wise next to the last serial number allotted under item (ii) : Provided that such Municipal Council or Nagar Panchayat shall be first allotted to the women belonging to the backward classes.

(iv) the number of offices determined under item (ii) of sub-clause (b) excluding the officers determined under the said sub-clause for the women of Scheduled Castes, Scheduled Tribes and backward classes shall be allotted to the women serial-wise next to the last serial number allotted under item (iii).

(e) If on the basis of the population of Scheduled Castes or Scheduled Tribes in a Municipal Council or Nagar Panchayat -

(i) only one office could be reserved for the Scheduled Castes or for the Scheduled Tribes, as the case may be, such office shall be allotted to the women,

(ii) no office could be reserved for the Scheduled Castes or for the Scheduled Tribes, the order of allotment of offices referred in sub-clause

(d) shall be so adhered to as if there is no reference in it to the Scheduled Castes or to the Scheduled Tribes, as the case may be

(f) The offices allotted in any previous election to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women shall not be allotted in the

subsequent election respectively to the Scheduled Castes, the Scheduled Tribes, the backward classes or the women and the offices in such subsequent election shall be allotted serially from the next to the last office allotted to the women in the previous election in the order referred to in sub-clause (d) in cyclic order.

(2) Reservation and allotment of the offices of Vice-President, - For the reservation and allotment of offices of the Senior Vice-President of Municipal Councils or the Vice-President of Nagar Panchayats, the provisions of sub-clause (5) of clause (1) shall mutatis mutandis apply : Provided that the number of offices to be reserved for the backward classes under this clause shall not be more than twenty-seven per cent of the total number of unreserved offices of President in the State : Provided also that the number of offices to be reserved for the women shall not be less than one-third of the total number of unreserved offices of President and if in determining such number of offices, there comes a remainder then the quotient shall be increased by one and the number so arrived at shall be the number of offices to be reserved for women : Provided also that offices allotted in any election to the women shall not be allotted to the women in the next following election and shall be allotted to the next Municipal Council or Nagar Panchayat, as the case may be : Provided also that if the office of the President of a Municipal Council is reserved, the office of Vice-President of that Municipal Council shall not be reserved : Provided that where the offices of Senior Vice-President in the Municipal Councils, are reserved for Scheduled Castes or backward classes or women, the office of Junior Vice-President in such Municipal Councils, the office of the junior most Vice-President shall be reserved for backward classes, women or Scheduled Castes, as the case may be.

(3) Allotment order, -

(a) Notwithstanding anything contained in the foregoing clauses the State Government shall, determining the number of offices to be reserved for the Scheduled Castes, Scheduled Tribes, Backward Classes and the women, by order published in the Gazette, allot the offices to the Municipalities.

(b) The draft of order under sub-clause (a) shall be published for objections for a period of not less than seven days.

(c) The State Government shall consider the objections, if any, but it shall not be necessary to hear in person on such objections unless the State Government considers it necessary so to do and thereupon it shall become final.

(d) The draft of order referred to in sub-clause (b) shall be published in at least one daily newspaper having wide circulation in the concerned district and shall also be affixed on the notice board of the offices of the District Magistrate and the concerned Municipality.]

(6) The reservation of seats and offices of the President for the Scheduled Castes and the Scheduled Tribes under this section shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution. Explanation. - It is clarified that nothing on this section shall prevent the persons belonging to the Scheduled Castes, Scheduled Tribes, the Backward Classes and the women from contesting election to unreserved seats and offices.] 1 [UTTARAKHAND] AMENDMENT 2[In the first proviso of Section 9-A(1) of the principal Act, the word "fourteen" shall be substituted for the words "twenty seven".] Reservation. - The idea of providing reservation for the benefit of the weaker sections of the society is not only to ensure their participation in the conduct of the affairs of the municipality but it is also an effort to improve their lot. The reservation ensures that the specified minimum number of persons belonging to that category become members of the municipality. 3 Change of caste after marriage. - In the light of the decision in Valsamma Paul V. Cochin University & Others 1 and the decision rendered in Civil Appeal Nos. 4413-14 of 2003, which were heard along with this appeal, it must be held that the appellant, who by birth did not belong to a backward class or community, merely on the basis of her marriage to a male of that community. Therefore, it is not possible to 1 The word "Uttaranchal" subs. by Act No. 52 of 2006. 2 Subs. by Uttaranchal Act No. 13 of 2002. 3 Kasambhai F. Ghanchi V. Chandubhi D. Rajput, (1998) 1 SCC 285. 1 (1996) 3 SCC 545. accept the argument that the appellant was entitled to contest a seat reserved for a

backward community merely because of her marriage to a person belonging to the Namdev Community or caste.

10. Section 10 :-

* * *]

10A. Term Of Municipality :-

(1) Every municipality shall, unless sooner dissolved under Section 39, continue for five years from the date appointed for its first meeting and no longer.

(2) An election to constitute a municipality shall be completed -

(a) before the expiry of its term specified in sub-section (1); or

(b) before the expiration of a period of six months from the date of its dissolution : Provided that where the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this sub-section for constituting the municipality for such period.

(3) A municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under sub-section (1), had it not been so dissolved.] 5 [(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where, due to unavoidable circumstances or in the public interest, it is not practicable to hold an election to constitute a Municipality before the expiry of its term, then until the due constitution of such Municipality, all the powers, functions and duties of the Municipality shall be exercised and preformed by the District Magistrate or by a Gazetted Officer not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such District Magistrate or Officer shall be called the Administrator, and such Administrator shall be deemed in law to be the Municipality, the President or the Committee as the occasion may require.]

10AA. Section 10AA :-

[UTTARAKHAND] AMENDMENT 1 [10-AA. Temporary provision regarding administration of a Municipality until a Municipality is constituted. - Where the term of a Municipal Council/Nagar Panchayat has expired and a new Municipal Council/Nagar Panchayat 2 Sandhya Thakur V. Vimla Devi Kushwah and others, (2005) 2 SCC 731. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 23 of 2005. 6 Omitted by U.P. Act No. 12 of 1994. 1 Ins. by Uttaranchal Act No. 1 of 2001 (w.e.f. 11.12.2000). has not been constituted, then until the due constitution of the new Municipal Council/Nagar Panchayat, -

(a) all powers, functions and duties of the Municipal Council/Nagar Panchayat, its President and Committee shall be vested in and be exercised, performed and discharged by an officer appointed in that behalf by the State Government, hereinafter referred to as the Administrator, and the Administrator shall be deemed in law to be the Municipal Council/Nagar Panchayat, the President or the Committee as the occasion may require;

(b) such salary and allowances of the Administrator as the State Government may by general or special order in that behalf fix shall be paid out of Municipal fund;

(c) the State Government may, from time to time, by notification in the Gazette, make such incidental or consequential provisions, including provisions for adapting, altering or modifying any provision of this Act, without affecting the substance, as may appear to it to be necessary or expedient for carrying out the purpose of the section : Provided that where the Administrator appointed under this Section is the District Magistrate, he may, subject to any general or special order of the State Government, delegate all or any of his powers, functions and duties under this Act

to any officer subordinate to him (hereinafter referred to as the officer-in-charge) and thereafter the salary and allowances of the officer-in-charge shall be paid in accordance with clause (b) :] 2 [Provided further that the Administrator appointed under this Section shall have a term till March 31, 2002 or till the new Municipal Council/Nagar Panchayat is constituted, whichever is earlier.]

11. Section 11 :-

* * *] Delimitation

11A. Delimitation Of Wards :-

(1) For the purpose of election of members of a municipality every municipal area shall be divided into territorial constituencies to be known as wards in such manner that the population in each ward shall, so far as practicable, be the same throughout the municipal area.

(2) Each ward shall be represented by one member in the municipality.] 2 Subs. by Uttaranchal Act No. 6 of 2001 (w.e.f. 11.06.2001) 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.

11B. Delimitation Order :-

(1) The State Government shall by order, determine, - 2 [(a) the number of wards into which each municipal area shall be divided for purposes of elections to the municipality;]

(b) the extent of each ward;

(c) 3 [* * *] 4 [(d) the number of seats to be reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes and the women.]

(2) The draft of the Order under sub-section (1) shall be 5 [published in the manner prescribed for a period of not less than seven days].

(3) The State Government shall consider any objections 6 [* * *] filed under sub-section (2) and the draft order shall, if necessary, be amended, altered or modified accordingly and thereupon it shall become final.

11C. Amendment Of Delimitation Order :-

[(1)] The State Government may, after consulting the 9 [Municipality] concerned, by a subsequent order, alter or amend the final order under sub-section (3) of Section 11-B.] 10 [(2) For the alteration or amendment of any order under sub-section (1), the provisions of sub-sections (2) and (3) of Section 11-B shall mutates mutandis apply.]

12. Section 12 :-

* * *] Electoral rolls

12A. Election Of Members :-

The members of a municipality shall be elected on the basis of adult suffrage in accordance with the provisions of this Act.] NOTES Election- Meaning of. - The expression "election" is defined by Section 2(d) of the Representation of the People Act as an election to fill a seat or seats in either 1 Ins. by U.P. Act No. 7 of 1953. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1995. 6 The word "and the comments", omitted by U.P. Act No. 26 of 1995. 7 Ins. by U.P. Act No. 7 of 1953. 8 Re-numbered as sub-section (1) thereof, by U.P. Act No. 26 of 1995. 9 Subs. by U.P. Act No. 12 of 1994. 10 Ins. by U.P. Act No. 26 of 1995. 12 Omitted by U.P. Act No. 7 of 1949. 13 Subs. by U.P. Act No. 12 of 1994. House of Parliament or in the

House or either House of the legislature of a State other than the State of Jammu and Kashmir. The word "election" has by long usage in connection with the process of selection of proper representatives in democratic institutions acquired both a wide and narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329(b) occurs. 1 Election of Chairperson. - As already observed, sub-clause (b) of clause (2) of Article 243-R leaves it to the State Legislature to determine the manner in which the Chairperson of a Municipality (Corporation) has to be elected. The word manner as used in Article 243-R(2)(b) would include the mode in which the election is to take place and also the duration for which the Chairperson/Mayor/Deputy Mayor shall hold office. 2 Right to Contest Election. - A right to contest election although arises under a statute but having regard to the Constitution (Seventy-fourth) Amendment Act, the interpretation thereof must be made keeping in view the constitutional scheme. Democracy at the grass-root level was sought to be introduced by reason of the said amendment in the Constitution. Once the concept of a grass-root democracy is accepted, a pragmatic and purposive meaning to the provisions of the Act must be assigned.

12B. Electoral Roll For Every Ward :-

(1) There shall be an electoral roll for every ward which shall be prepared in accordance with the provisions of this Act under the superintendence, direction and control of the State Election Commission. 5 [(2) Subject to sub-section (1), the electoral roll for every ward shall be prepared and published by the Electoral Registration Officer in the manner prescribed by rules under the supervision of the Chief Election Officer (Urban Local Bodies).

(2-A) The Chief Election Officer (Urban Local Bodies) and the Electoral Registration Officer referred to in sub-section (2) shall be such officer of the State Government as the State Election Commission may, in consultation with the State Government, nominate or designate in this behalf.

(2-B) Upon the publication of the electoral roll, it shall, subject to any alteration, addition or modification made by or under this Act be the electoral roll for the ward prepared in accordance with this Act.] 1 Election Commission of India V. Shivaji (1988) 1 SCC 277. 2 P.R. Ramesh and etc. V. State of Karnataka and others, AIR 2005 Kant 364. 3 Ramesh Mehta V. Sanwal Chand Singhvi, (2004) 5 SCC 409. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1995.

(3) Notwithstanding anything contained in this Act, the 1 [Electoral Registration Officer may for the purpose of preparation of electoral roll for a ward, adopt, in accordance with the direction of the State Election Commission] the electoral roll of the Assembly constituency prepared under the Representation of the People Act, 1950 for the time being in force so far as it relates to the area of that ward: Provided that the electoral roll for such ward shall not include any amendment, alteration or correction made after the last date for making nomination for the election of such ward and before the completion of such election]. NOTE Electoral rolls. - So far as the preparation of electoral rolls are concerned, elaborate measures have been provided to ensure proper preparation of the electoral rolls. Electoral rolls have to be prepared subject to superintendence, direction and control of the State Election Commission. There is a provision for making application for correction of an electoral roll by an aggrieved person. There is also a provision for appeal against any order in regard to inclusion, deletion or correction of name in the electoral roll.

12C. Qualification For Electors :-

Subject to the provisions of Section 12-D and 12-E every person who has attained the age of 18 years on the first day of January of the year in which the electoral roll is prepared or revised, and who is ordinarily resident in the area of the ward shall be entitled to be registered in the electoral roll for the ward. Explanation. -

(i) A person shall not be deemed to be ordinarily resident in the area of a ward on the ground only that he owns, or is in possession of a dwellinghouse therein.

(ii) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(iii) A member of Parliament or of the Legislature of the State shall not, during the term of his office, cease to be ordinarily resident in the area of a ward merely by reason of his absence from that area in connection with the duties as such member.

(iv) Any other factors that may be prescribed shall be taken into consideration for deciding as to what persons may or may not be deemed to be ordinarily residents of a particular area at any relevant time.

(v) If in any case a question arises as to where a person is ordinarily resident at any relevant time, the question shall be determined with reference to all the facts of the case. 1 Subs. by U.P. Act No. 26 of 1995. 3 Anugrah Narain Singh V. State of U.p., (1996) 6 SCC 303.

12D. Disqualifications For Registration In An Electoral Roll

:-

(1) A person shall be disqualified for registration in an electoral roll, if he, -

(i) is not a citizen of India; or

(ii) is of unsound mind and stands so declared by a competent Court; or

(iii) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.

(2) The name of any person who becomes disqualified under sub-section (1) after registration shall forthwith be struck off the electoral roll in which it is included : Provided that the name of any person struck off the electoral roll by reason of any such disqualification shall forthwith be reinstated in that roll, if such disqualification is during the period such roll is in force, removed under any law authorizing such removal.

12E. Registration To Be In One Ward Only :-

(1) No person shall be entitled to be registered in the electoral roll for more than one ward or more than once in the electoral roll for the same ward.

(2) No person shall be entitled to be registered in the electoral roll for any ward, if his name is entered in any electoral roll pertaining to any city, other 1 [Municipal area, Cantonment or area of Gram Panchayat], unless he shows that his name has been struck off from such electoral roll.

12F. Correction Of Electoral Roll :-

(1) Where the Electoral Registration Officer is satisfied, after making such enquiry as he thinks fit, whether on an application made to him or on his own motion, that any entry in the electoral roll should be corrected or deleted or that the name of any person entitled to be registered should be added in the electoral roll, he shall subject to the provisions of this Act and the rules or orders made thereunder, delete or correct or add the entry, as the case may be : Provided that no such deletion or correction or addition shall be made after the last date for making nomination for an election in the ward and before the completion of such election : Provided further that no deletion or correction affecting the interest of any person adversely shall be made without giving him reasonable opportunity of being heard

in respect of the action proposed to be taken in relation to him.

(2) An appeal shall lie within such time and manner and to such officer or authority as may be prescribed by rules against any order of the Electoral Registration 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 26 of 1995. Officer in regard to the inclusion, deletion or corrections of a name in the electoral roll.]

12G. Revision Of Electoral Rolls :-

1 [The State Election Commission] may, if 2 [it] thinks it necessary to do for the purpose of a general or bye-election, direct a 3 [* * *] revision of the electoral roll for any ward in such manner as 4 [it] may think fit : Provided that subject to the other provision of this Act, the electoral roll for the ward, as in force at the time of issue of any such direction shall continue to be in force until the completion of the 5 [* * *] revision, so directed.

12H. Order Regarding Electoral Rolls :-

[In so far as provision with respect to any of the following matters is not made by this Act or the rules made thereunder, the State Election Commission may], by order make provision in respect of the following matters concerning the electoral rolls, namely -

- (a) the date on which the electoral rolls first prepared and subsequently prepared under this Act shall come into force and their period of operation;
- (b) the correction of any existing entry in the electoral rolls on the application of the elector concerned;
- (c) the correction of clerical or printing errors in the electoral rolls;
- (d) the inclusion in the electoral rolls of the name of any person -
 - (i) whose name is included in the Assembly rolls for the area relatable to the ward but is not included in the electoral roll of the ward or whose name has been wrongly included in the electoral roll of some other ward; or
 - (ii) whose name is not so included in the Assembly rolls and who is otherwise qualified to be registered in the electoral roll of the ward;
- (e) 8 [* * *]
- (ee) fees payable on applications for inclusion or exclusion of names; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Omitted by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 35 of 1978. 7 Subs. by U.P. Act No. 26 of 1995, for "The State Election Commission may". 8 Omitted by U.P. Act No. 12 of 1994.(f) custody and preservation of the electoral rolls; and
- (g) generally for all matters relating to the preparation and publication of the electoral rolls.]

13. Section 13 :-

* * *] Conduct of elections

13A. General Election :-

Except as provided in Section 31-A, the State Government shall, in consultation with the State Election Commission, by the Official Gazette, appoint date or dates for general election to a municipality.] NOTES Nomination paper - Rejection of. - The decision of the Supreme Court in the case of Lila Kishan V. Mani Ram Godara 3 , has upheld the rejection of nomination paper due to mention of wrong serial number of the voter list in the nomination paper only because no assistance was provided to the returning officer to co-relate and identify the proposer. 4 Recounting of inspection of ballot papers. - It was held in the case of Suresh Prasad V. Jai Prakash 5 , that re-counting or inspection of ballots in an election petition can be directed where :

- (a) The election petition contains an adequate statement of all the material facts on which the allegation of irregularity in counting are founded.

(b) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(c) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. 6 Cancellation of election. -In a case of cancellation of election, if there are more than two candidates there has to be a fresh election and the person getting the second highest number of votes cannot be declared elected. This is because if the voters had known that the person who got the highest number of votes was disqualified to contest the election, it is quite possible that they would have voted for 1 Omitted by U.P. Act No. 7 of 1953. 2 Subs. by U.P. Act No. 12 of 1994. 3 AIR 1985 SC 1073. 4 Ambika V. Ram Bhual, (2005) 1 SAC 61. 5 AIR 1975 SC 376. 6 Ashok Jain V. XIIIth Additional District Judge, Agra and others, 2000(91) RD 70. the person who got the third highest number of votes or some other candidate other than the person who got the second highest number of votes. 1 It has been time and again emphasized that two conditions must co-exist before an order directing the inspection of the ballot papers can be made. One of the conditions laid down by the Apex Court as well as this Court is that the Tribunal must be prima facie satisfied on the basis of material placed before it that there is ground for believing the existence of such ground that the making of such an inspection is imperatively necessary for deciding the dispute and for doing complete justice between the parties.

13B. Superintendence Etc. Of The Conduct Of The Elections

:-

[(1)] The superintendence, direction and control of the conduct of all elections to the municipalities shall be vested in the State Election Commission.] 5 [(2) Subject to sub-section (1), the Chief Election Officer (Urban Local Bodies), referred to in sub-section (2-A) of Section 12-B shall supervise the conduct of all elections to the municipalities.] 6 [UTTARAKHAND] AMENDMENT 7 [(3) State Election Commission shall obtain from all candidates a declaration in the form of an affidavit containing the following information and any other information it deems necessary and shall, except information contained in clauses (c) and (e), make public the same for the information of the electorate, -] 8 [(a) whether the candidate has been convicted/acquired/discharged of any criminal offence in the past and, if convicted, whether he was punished with imprisonment or fine;

(b) prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof;

(c) the assets (immovable, movable, bank balances, etc.) of a candidate and of his/her spouse and, that of dependants;

(d) liabilities, if any, particularly whether there are any overdues of any Public Financial Institutions or Government dues; 1 Nand Kishroe V. State Election Commission and others, 2003 (50) ALR 159. 2 Smt. Saroj Sharma V. Smt. Imarta Saini and others, (2000) 2 SAC 259. 3 Subs. by U.P. Act No. 12 of 1994. 4 Re-numbered as sub-section (1) by U.P. Act No. 26 of 1995. 5 Ins. by U.P. Act No. 26 of 1995. 6 The word "Uttaranchal" subs. by Act No. 52 of 2006. 7 Amended by Uttaranchal Act No. 11 of 2003 (w.e.f. 27.05.2003). 8 Added by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). (e) his/her source of income and full details of present Monthly/Annual Income;

(f) whether he/she is married/unmarried;

(g) number of children, their ages, and their educational expenses;

(h) details of his/her income tax, house tax, projections tax/fees payable annually;

(i) the educational qualifications of candidate.] NOTES Conduct of elections - Firearms. - If a person carried firearm without violating any provisions of the Arms Act and without attracting any of the prohibiting provisions dealing with public order and law under the Code of Criminal Procedure, 1973 and also otherwise does

not interfere with the peaceful life of the public at large, the matter will not be covered under the expression "conduct of elections." 1 Election Commission. - The Election Commission is vested with the power to decide the election schedule. It can act only in accordance with the constitutional provisions. There may be a situation where the Election Commission may not be in a position to conduct free and fair election because of certain natural calamities. Even under such situation, the Election Commission shall endeavour to conduct election at the earliest making use of all the resources within its command. Ample powers are given to the Election Commission to coordinate all actions with the help of various departments of the Government including military and paramilitary forces.

13C. Qualifications For Election Of Member :-

A person shall not be qualified for being chosen as and for being a member unless -
(a) he is an elector for any ward in the municipality;

(b) in the case of a seat reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes or the women, he is a person belonging to the said category, as the case may be;

(c) he has attained the age of twenty one years.] 1 [UTTARAKHAND] AMENDMENT 1 Ramhit V. State of U.P. (2002) 2 SAC 84. 2 Special Reference No. 1 of 2002, in re (Gujarat Assembly Election matter), (2002) 8 SCC 237. 3 Subs. by U.P. Act No. 12 of 1994. 2 [(d) he is not a candidate from more than one ward.]

13D. Disqualification For Membership :-

A persons, notwithstanding that he is otherwise qualified shall be disqualified for being chosen as, and for being, a member of a 4 [Municipality] if he, - 5 [(a) is a dismissed servant of a local authority and is debarred from reemployment thereunder; or

(aa) having held any office under the Government of India or the Government of any State has been dismissed for corruption or disloyalty to the State unless a period of six years has elapsed since is dismissal, or]

(b) is debarred from practicing as a legal practitioner by order of any competent authority; or

(c) holds any place of profit in the gift or disposal of the 6 [Municipality]; or

(d) is disqualified under Section 27 or 41; or

(e) 7 [* * *] 8 [UTTARAKHAND] AMENDMENT [(e) has more than two living children of whom one is born after expiry of 300 days from the date of notification of this part; or

(f) is in the service of the State or the Central Government or any local authority, or is a District Government Counsel or an Additional or Assistant District Government Counsel or an Honorary Magistrate or an Honorary Munsif or an Honorary Assistant Collector; or

(g) is in arrears in the payment of Municipal Tax or other dues in excess of one years demand to which Section 166 applies; or

(h) [* * *] 1 The word "Uttaranchal" subs. by Act No. 52 of 2006. 2 Ins. by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). 3 Ins. by U.P. Act No. 7 of 1953. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 15 of 1983. 7 Omitted. by U.P. Act No. 26 of 1964. 8 The word "Uttaranchal" subs. by Act No. 52 of 2006. [UTTARAKHAND] AMENDMENT 9

[(h) has been convicted of any offence against a woman; or]

(i) is an discharged insolvent; or 10 [(ii) has been convicted of any offence punishable with imprisonment under Section 171-E or an offence punishable under Section 17-F of the Indian Penal Code, 1860 (Act No. 45 of 1860); or] 11 [(j) has been sentenced to imprisonment for contravention of any order under the Essential Commodities Act, 1955, or the Uttar Pradesh Control of Supplies (Temporary Powers) Act, 1947 (U.P. Act II of 1947), as re-enacted by the Uttar Pradesh Control of Supplies (Temporary Powers) Act, 1953 (U.P. Act XII of 1953, or the Prevention of Food Adulteration Act, 1954 (U.P. Act XXXVII of 1954) or for an offence which is

declared by the State Government to involve such moral turpitude as to render him unfit to be a member, or has been ordered to execute a bond for good behaviour in consequence of proceedings under Section 109 or 110 of the Code of Criminal Procedure, 1898 1 , such sentence or order not having been subsequently reversed;] Provided that in cases of (a) and (b) the disqualification may be removed by an order of the State Government in this behalf : Provided further that in the case of (g), the disqualification shall cease as soon as the arrears are paid 2 [:] 3 [Provided also that in case of (j), -

(i) the disqualification shall cease on the expiry of the five years from the date of his release or from the date of expiry of the period for which he is required to execute a bond for good behaviour, as the case may be; and

(ii) the disqualification shall not in the case of a person who is, on the date of the disqualification, a member of the 4 [Municipality] take effect until three months have elapsed from the date of such disqualification or if within these three months an appeal or petition for revision is 9 Ins. by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). 10 Ins. by U.P. Act No. 26 of 1964. 11 Subs. by U.P. Act No. 26 of 1964. 1 See now Code of Criminal Procedure, 1973. 2 Ins. by U.P. Act No. 26 of 1964. 3 Ins. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. brought in respect of conviction or order until that appeal or petition is disposed of.] 5

[Explanation. - A Government treasurer shall not be deemed to be in the service of the State or of the Central Government within the meaning of clause (f)]. 6 [(k) is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State : Provided that no persons shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one years.] 1 [UTTARAKHAND] AMENDMENT 2 [(l) has an interest or share, in a publication where in advertisement regarding activities of the municipalities can be published; or

(m) is a paid employee of any institution, receiving financial aid from the municipalities; or

(n) the person or any member of his/her family or his/her legal heir is in unauthorized occupation of any land or building owned or managed by the municipality/Government or a public road or pavement, canal, drain, or is a beneficiary of such unauthorized occupation; or

(o) is a representative or office bearer of any federation or union of any cadre or class of employees of the municipality; or

(p) has been convicted of any offence involving violation of any Act, rules, sub-rules, regulations and Government orders relating to municipality and has been found guilty or working against the interest of the municipality.] NOTES Election

petition - Disqualification on the ground of dues. - The election petition was heard by the Election Tribunal and by its judgment dated October 20, 1954, the Election Tribunal held that the appellant was in arrears in the payment of municipal tax in excess of one years demand to which Section 166 of the Act applied and therefore came under the disqualification in clause (g) of Section 13-D of the Act. 3 5 Ins. by U.P. Act No. 1 of 1955. 6 Ins. by U.P. Act No. 12 of 1994. 1 The word "Uttaranchal" subs. by Act No. 52 of 2006. 2 Ins. by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). 3 Mangoo Singh V. Election Tribunal, 1958 SCR 418. Disqualification.

- If the disqualification clause (g) of Section 13-D of the Act is to come into operation only on the day of the poll, then it is quite necessary for the Returning Officer to consider that disqualification at the time of scrutiny; and indeed it will be improper for him to refuse nomination on the ground of such disqualification. Clause (b) of para 22(2) uses the same expression "disqualified for being chosen" - showing clearly enough that the starting point of the act of choosing is not on the date of the poll only. The process of choosing commences on the date of filing nominations. 4 The provisions of Section 13-D do apply to members of the Board incurring disqualification during the period of their membership and are not confined in their application to the stage previous to the election as, in that case, the expression "and for being" in the section would have been unnecessary.

13E. Right To Vote :-

- (1) No person who is not, and except as expressly provided by this Act, every person who is for the time being entered in the electoral roll of any ward shall be entitled to vote in that ward.
- (2) No person shall vote at an election in any ward if he is subject to any of the disqualifications referred to in Section 12-D.
- (3) No person shall vote at a general election in more than one ward and if a person votes in more than one such ward, his votes in all such wards shall be void.
- (4) No person shall at any election vote in the same ward more than once, notwithstanding that his name may have been registered in the electoral roll for that ward more than once, and if he dies so vote, all his votes in that ward shall be void.
- (5) No person shall vote at any election if he is confined in a prison whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the Police : Provided that nothing in this sub-section shall apply to a person subject to preventive detention under any law for the time being in force.]

13F. Procedure Of Voting :-

Wherever an election takes place in any ward, voting shall be either through secret ballot or voting machine and there shall be no proxy voting.] 4 Mool Chand Sharma V. State of U.P., (1962) 3 SCR 708. 5 Mangoo Singh V. Election Tribunal, 1958 SCR 418 at p. 423.. 1 Ins. by U.P. Act No. 7 of 1953. 2 Omitted by U.P. Act No. 12 of 1994. 3 The word "Uttaranchal" subs. by Act No. 52 of 2006. 4 Ins. by Uttaranchal Act No. 13 of 2002 (w.e.f. 21.12.2002). 13-G. Order regarding conduct of elections. - 5 [In so far as provision with respect to any matter is not made by this Act, the State Election Commission] may, by order, make provision with respect to the following matters concerning conduct of elections, that is to say, -

- (a) issue of notifications for general elections;
- (b) the appointment, powers and duties of Returning Officers, Assistant Returning Officers, Presiding Officers and Polling Officers and clerks;
- (c) appointment of dates for nomination, scrutiny, withdrawal and polling;
- (d) the manner of presentation and the form of nomination paper, the requirements for a valid nomination, scrutiny of nominations and withdrawal of candidature;
- (e) appointment and duties of election agents, polling agents and counting agents;
- (f) procedure at general election including death of candidate before poll, procedure in contested and uncontested elections, 1 ;[* * *]
- (g) identification of voters;
- (h) hours of polling;
- (i) adjournment of poll and fresh poll;
- (j) manner of voting at elections;
- (k) scrutiny and counting of votes including recount of votes and procedure to be followed in case of equality of votes and declaration of results;
- (l) the notification of the names of the members elected for the various wards of municipality and the due constitution of the 2 [Municipality];
- (m) return of forfeiture of deposits;
- (n) manner in which votes are to be given by the presiding officers, polling agents or any other person who being an elector for a ward is authorized or appointed for duty at a polling station at which he is not entitled to vote; 5 Subs. by U.P. Act No. 12 of 1994, for the words "the State Government". 1 Omitted by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.(o) the procedure to be followed in respect of the tender of vote by person representing himself to be an elector after another person has voted as such elector;
- (p) the safe custody of ballot boxes papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers; and
- (q) generally on all matters relating to conduct of elections.

13H. Bye-Elections :-

(1) Subject to the provisions of sub-section (2) of Section 13-I, when the seat of a member, elected to a 3 [Municipality] becomes vacant or is declared vacant or his election is declared void, 4 [the State Election Commission shall in consultation with the State Government] by a notification in the Official Gazette, call upon the ward concerned to elect a person for the purpose of filling the vacancy caused before such date as may be specified in the notification and the provisions of this Act and of the Rules and Orders made thereunder, shall apply, as far as may be, in relation to the election of member to fill such vacancy.

(2) If the vacancy so caused be a vacancy in a seat reserved in any such ward for the Scheduled Castes, 1 [the Scheduled Tribes, the Backward Classes or the women] the notification issued under sub-section (1) shall specify that the person to fill that seat shall belong to the Scheduled castes 2 [the Scheduled Tribes, the Backward Classes or the women, as the case may be].

13I. Certain Casual Vacancies Not To Be Filled :-

Where a vacancy occurs on a 3 [Municipality] by reason of death, resignation, removal or avoidance of an election of the elected member and the term of office that member would, in the ordinary course of events, have determined within one year of the occurrence of the vacancy, 4 [such vacancy may be left unfilled].

13J. Electoral Offences :-

(1) The provisions of Sections 125, 126, 127, 127-A, 128, 129, 130, 131, 132, 134, 134-A, 135, 6 [135-A] and 136 of Chapter III of Part VII of the Representation of the People Act, 1951, shall have effect as if, -

(a) the reference therein to an election were a reference to an election held under this Act;

(b) for the word "constituency" the word "ward" had been substituted; 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 35 of 1978. 6 Ins. by U.P. Act No. 26 of 1995. (bb) in Section 127-A in sub-section (2) in clause (b) in sub-clause (i), for the words "the Chief Electoral Officer" the words 7 [Chief Election Officer (Urban Local Bodies)] had been substituted; (c) 8 [* * *] (d) in Section 134 and 136 for the words "by or under this Act" the words "by or under the Uttar Pradesh Municipalities Act, 1916" had been substituted.

(2) If 9 [Chief Election Officer (Urban Local Bodies)], has reason to believe that any offence punishable under Section 129 or Section 134 or Section 134-A or under clause (a) of sub-section (2) of Section 136 of the said chapter has been committed in reference to any election to a 1 [Municipality], it shall be the duty of the 2 [Chief Election Officer (Urban Local Bodies)] to cause such inquiries to be made and such prosecutions to be instituted as the circumstances of the case may appear to him to require.

(3) No Court shall take cognizance of any offence punishable under Section 129 or under Section 134 or under Section 134-A or under clause (a) of sub-section (2) of Section 136 unless there is a complaint made by order or under authority from the 3 [Chief Election Officer (Urban Local Bodies)].

13K. Jurisdiction Of Civil Courts :-

(1) No Civil Court shall have jurisdiction, -

(a) to entertain or adjudicate upon any question whether any person is or is not entitled to be registered in an electoral roll of a ward; 5 [(b) to question the

legality of any action taken by or under the authority of the State Election Commission in respect of preparation or publication of electoral roll; or]

(b) to question the legality of any action taken or any decision given by the Returning Officer or by any other officer appointed under this Act in connection with an election.

(2) No election shall be called in question except by an election petition presented in accordance with the provisions of this Act]. 7 Subs. by U.P. Act No. 26 of 1995, for "State Election Commission". 8 Omitted by Presidents Act No. 3 of 1996, Sec. 4 (w.e.f. 29.09.1995). 9 Subs. by U.P. Act No. 26 of 1995, for "State Election Commission". 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 26 of 1995, for "State Election Commission". 3 Subs. by U.P. Act No. 26 of 1995, for "State Election Commission". 4 Ins. by U.P. Act No. 7 of 1953. 5 Subs. by U.P. Act No. 12 of 1994.

14. Section 14 :-

15. Section 15 :-

16. Section 16 :-

17. Section 17 :-

18. Section 18 :-

* * *] Election petitions

19. Power To Question Municipal Election By Petition :-

(1) The election of any person as a member of a 8 [Municipality] may be questioned by an election petition on the ground,-

(a) that such person committed during or in respect of the election proceedings a corrupt practice as defined in Section 28;

(b) that such person was declared to be elected by reason of the improper rejection or admission of one more votes, or any other reason was not duly elected by a majority of lawful votes; 1 [(c) that such person was not qualified to be nominated as a candidate for election or that the nomination paper of the petitioner was improperly rejected.]

(2) The election of any person as a member of a 2 [Municipality] shall not be questioned, -

(a) on the ground that the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in the electoral roll or rolls; 3 [(b)] on the ground of any non-compliance with this Act or any rule, or of any mistake in the forms required thereby, or of any error, irregularity or informality on the part of the officer or officers charged with carrying out this Act or any rules, unless such non-compliance, mistake, error, irregularity or infirmity has materially affected the result of the election. NOTES A statement given under Order X,

Rule 2, CPC has to be read as a whole. A part of it cannot be torn out of the context to be used against the petitioner. The petitioner may have a right to file an application under Order VII, Rule 11, CPC before filing a written statement but that statement under Order X, Rule 2, CPC, could not have been taken into account to make the entire pleadings in election 6 Omitted by U.P. Act No. 7 of 1953. 7 Omitted by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Re-numbered by U.P. Act No. 9 of 1922. petition ineffective. The petitioner has a right to challenge the same on all grounds available and that challenge cannot be thrown on technical grounds before giving an opportunity to substantiate the same on record.

20. Form And Presentation Of Election Petitions :-

(1) An election petition shall be presented within 30 days after the day of which the result of the election sought to be questioned is announced by the Returning Officer, and shall specify the ground or grounds on which the election of the respondent is questioned and shall contain a concise statement of the material facts on which the petitioner relies and set forth the full particulars of any corrupt practices that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practices and the dates and place of the commission of each such practice.

(2) The petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (V of 1908), for the verification of pleadings.

(3) The petition may be presented by any candidate in whose favour votes have been recorded and who claims in the petition to be declared elected in the room of the person whose election is questioned or by ten or more electors of the municipality or by a person who claims that his nomination paper was improperly rejected.

(4) The person whose election is questioned and, where the petitioner claims that any other candidate should be declared elected in the room of such person, every unsuccessful candidate who is not a petitioner in the petition shall be made a respondent to the petition.] 1 [(5) The petition shall be presented to the District Judge exercising jurisdiction in the area in which the municipality, to which the election petition relates, is situate :

Provided that the petition shall not be entertained by the District Judge, unless it is accompanied by a treasury challan showing that the prescribed security has been deposited]. NOTES Scope of the section. - Section 20 of the Act provides for form of presentation of the election petition and limitation for filing of the election petition. There is no mention in it of an election of the president or a member of the Municipal Board or Town Area Committee. Section 20 of the Act provides for election petition 4 Smt. Veena Agarwal V. Additional District Judge, (Court No.2), Moradabad and others, (2003) 1 SAC 87. 5 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 17 of 1982.of all types, be it against the member or against the chairman of the Town Area Committee. 2 Election petition - Jurisdiction. - It was held in view of the judgment in Shiv Naryan V. District Judge 3 , that an election petition challenging the election Chairman of Town Area Committee could only be filed before the District Judge and not to the Munsif. 4 Election petition - Limitation. - Section 20(1) of the U.P. Municipalities Act which has been applied to election petitions in respect of the Town Areas states that an election petition shall be presented within 30 days after the election result is announced by the returning officer. 5 Election petition - Defect in material facts. - In V. Narain Swami V. C.P. Thirunvukkarasu 1 , it was held that in the matter of an election petition in case of defect in material facts, the petition has to be rejected at the outset, but in case of material particulars, it can be cured subsequently. Where in spite of sufficient opportunity given to cure the defect in material particulars, petitioner fails to cure the defect, the petition has to be rejected. 2 Election Petition - Difference between libel and corrupt practice. - Both, for libel action as well as for an allegation of corrupt practice in an election petition, it is necessary to plead as well as to prove the extrinsic facts to spell out the innuendo meaning of the words complained of. However, whereas in a libel action it may further be necessary to prove that those with special knowledge of the extrinsic facts were likely to interpret or understand the words complained of in a defamatory sense, in an election action, it may not be necessary to do so and all that is necessary is to prove that the words complained of were reasonably calculated to prejudice the prospects of the defamed candidates election. However, this latter distinction does not obliterate the similarity between the two action, viz. that in each case in the first instance the defamation is to be spelt out by pleading the necessary extrinsic facts. In a libel action, the extrinsic facts constitute a cause of action whereas in

the election action they constitute the corrupt practice. In other words, without them, there is no cause of action in the libel suit and no allegation of corrupt practice in an election petition. 3 Election petition - Material facts. - Necessary averments of facts constituting an appeal on the ground of "his religion" to vote or to refrain from voting would be material facts within the meaning of clause (a) of sub-section (1) of Section 83 of the Representation of People Act. If such material facts are missing, they cannot 2 Shiv Narain V. District Judge, Barabanki and others, 1990 RD 307. 3 1990 ALJ 389. 4 Shailendra Singh V. District Judge, Banda, 1992 (Suppl) RD 403. 5 Shailendra Singh V. District Judge, Banda, 1992 (Suppl) RD 403. 1 (2000) 2 SCC294. 2 Sushil Singh V. Prabhu Narain Yadav and others, (2003) 2 SAC 670. 3 M.J. Zakharia Sait V. T.M. Mohammed, (1990) 3 SCC 396. be supplied later on after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order VI, Rule 16 of the CPC, 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (a) of Rule 11 of CPC.

21. Recriminatory Proceedings :-

(1) Where in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such other candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election : Provided that the returned candidate or such other party shall not be entitled to give such evidence unless he has within twenty-one days from the date of the service upon him of the notice of the election petition, given notice to the election tribunal of his intention to do so and has also deposited the security prescribed in the case of an election petition questioning the election of a member.

(2) Every notice referred to in sub-section (1) shall be accompanied by a statement of ground or grounds and of material facts and full particulars required by Section 20 in the case of an election petition and shall be signed and verified in like manner].

22. Hearing Of Election Petition :-

(1) An election petition not complying with the provisions of Section

20 or upon which the requisite court fee has not been paid at the time of presentation or with in such further time not exceeding fourteen days as the 2 [District Judge], as the case may be, may have granted, shall be rejected by such Judge.] 3 [(2) An election petition not rejected under sub-section (1) shall be heard by the District Judge.] NOTE Opportunity of hearing. - The requirement to apply the provisions of Section 99 of the Representation of the People Act is in respect of a person who is not a party to the proceeding. The stature mandates that before a person is named as having indulged in corrupt practices he must be given the same opportunity which is given to a party to the petition. By reason of such a notice and giving an opportunity to the 4 Harmohinder Singh Pradhan V. Ranjeet Singh Tawandi and others, (2005) 5 SCC 460. 5 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 17 of 1982. 3 Subs. by U.P. Act No. 17 of 1982.notice to cross-examine the witnesses on behalf of his defence, he is placed in the same position as that of a party in petition.

23. Procedure :-

Except so far as may be otherwise provided by this Act or by rule, the procedure provided in the Civil Procedure Code (Act V of 1908) in regard to suit, shall, so far as it is not consistent with this Act or any rule and so far it can be made applicable, be followed in the hearing of election petitions : Provided that, -

(a) two or more persons whose election is called in question may be made respondents to the same petition, and their cases may be tried at the same time, and any two or more election petitions may be heard together; but, so far as is consistent with such joint trial or hearing, the petition shall be deemed to be separate petition against each respondent;

(b) the 1 [District Judge] shall not be required to record or have recorded the evidence in full, but shall make a memorandum of the evidence sufficient in its option for the purpose of deciding the case;

(c) the 2 [District Judge] may, at any stage of the proceedings, require the petitioner to give 3 [* * *] further security for the payment of all costs incurred or likely to be incurred by any respondent;

(d) the 4 [District Judge] for the purpose of deciding any issue, shall only be bound to require the production of, or to receive so much evidence, oral or documentary, as it considers necessary;

(e) during the hearing of the case the 5 [District Judge] may refer a question of law to the High Court under Order XLVI of the First Schedule of the Code of Civil Procedure, 1908, but there shall be no appeal either on a question of law or fact, and no application in revision against or in respect of the decision of the 6 [District Judge]; 7 [(f) any person considering himself aggrieved by the decision may apply for review to the 8 [District Judge] within thirty days from the date of 4 Dr. Rameh Yeshwant Prabhoo V. Prabhakar Kashinath Kunte, (2001) 1 SCC 594; Mercy Kutty Amma V. Kadavoor Sivdasan and another, (2004) 2 SCC 217. 1 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 2 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 3 Omitted by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 5 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 6 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 7 Subs. by U.P. Act No. 7 of 1949. decision and the 9 [District Judge] may thereupon review the decision on any point;] 10 [Provided that in computing the period of limitation the provision of subsection (2) of Section 12 of the Limitation Act, 1963 shall apply.]

23A. Section 23A :-

24. Provisions As To Costs :-

An order for costs or an order for the realization of a security bond for costs passed by the District Judge in an election petition under this Act may be sent by him for executing to the Collector of the district in which the municipality concerned is situated and an order so sent shall be executed by the Collector in the same manner as if it were in respect of arrears of land revenue.]

25. Finding Of The District Judge :-

(1) If the 3 [District Judge], after making such inquiry as it deem necessary, finds in respect of any person whose election is called in question by a petition, that his election was valid, it shall dismiss the petition as against such person and may award costs at its discretion and may also pass such order for return or forfeiture of the security or part thereof as he may deem fit.]

(2) If the 4 [District Judge] finds that the election of any person was invalid, 5 [or that nomination paper of the petitioner was improperly rejected,] it shall either, -

(a) declare a casual vacancy to have been created; or

(b) declare another candidate to have been duly elected, whichever

course appears, in the particular circumstances of the case, the more appropriate, and in either case may award costs at its discretion.

(3) 6 [* * *]

26. Avoidance Of Election Proceedings :-

(1) Notwithstanding anything contained in the preceding section if the 7 [District Judge] in the course of hearing an election petition is of the opinion that the evidence discloses that corrupt practices at 8 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 9 Subs. by U.P. Act No. 17 of 1982 for the word "Court". 10 Subs. by U.P. Act No. 35 of 1978. 11 Omitted by U.P. Act No. 17 of 1982. 12 Subs. by U.P. Act No. 17 of 1982. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 35 of 1978. 3 Subs. by U.P. Act No. 17 of 1982. 4 Subs. by U.P. Act No. 17 of 1982. 5 Ins. by U.P. Act No. 7 of 1949. 6 Omitted by U.P. Act No. 7 of 1953. 7 Subs. by U.P. Act No. 17 of 1982. the election proceedings in question have prevailed to such an extent as to render it advisable to set aside the whole proceedings, it shall pass a conditional order to this effect and give notice thereof to every candidate declared elected who has not already been made a party in the case calling upon him to show cause why such conditional order should not be made final.

(2) Thereupon every such candidate may appear and show cause, and may have recalled, for the purpose of putting question to him, any witness who has appeared in the case.

(3) The 8 [District Judge] shall thereafter either cancel the conditional order or make it absolute, in which case it shall direct the 9 [Municipality] to take measures for holding fresh election proceedings. Explanation. - In this clause the expression "the election proceedings in questions" and the "whole proceedings" shall mean all proceedings (inclusive of nomination and declaration of election) taken in respect of a single poll, whether the poll be for the purpose of selecting one or more persons to represent a ward or otherwise.

27. Disqualification Of Corrupt Practice :-

(1) The 1 [District Judge] may declare any candidate found to have committed any corrupt practice 2 [* * *] to be incapable, for any period not exceeding five years, of being elected as a member of the 3 [Municipality] or of being appointed or retained in any office

or place in the gift or disposal of the 4 [Municipality] 5 [:] 6 [Provided that no such declaration shall be made about any candidate who was not a party to the election petition or who was not given an opportunity of being heard under Section 26].

28. Corrupt Practices :-

A person shall be deemed to have committed a corrupt practice who, directly or indirectly, by himself or by any other person, -

(i) induces, or attempts to induce, by fraud, intentional misrepresentation, coercion or threat of injury, any voter to give or to refrain from giving a vote in favour of any candidate;

(ii) with a view to inducing any voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money, or valuable consideration, or any place, or employment, 8 Subs. by U.P. Act No. 17 of 1982. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 17 of 1982. 2 Omitted by U.P. Act No. 17 of 1934. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 17 of 1934. 6 Ins. by U.P. Act No. 17 of 1934. or holds out any promise or individual advantage or profit to any person;

(iii) gives or procures the giving of a vote in the name of a voter who is not the person giving such vote;

(iv) abets [within the meaning of the Indian Penal Code (Act 15 of 1860)] the doing of any of the acts specified in clauses (i), (ii) and (iii); 7 [(v) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object to divine displeasure or spiritual censure;

(v) canvasses on grounds of caste, community, sect or religion;

(vi) commits such other practice as the 8 [State Government], may be rule prescribe to be corrupt practice.] Explanation. - A "promise of individual advantage or profit to person" includes a promise for the benefit of the person himself, or of any one in whom he is interested, but does not include a promise to vote for or against any particular municipal measure. NOTES Allegations of corrupt practice - Nature of. - Allegation of corrupt practices are quasi-criminal charges and the proof that would be required in the support thereof would be as in a criminal charge. The charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in a criminal trial. 1 Election - Corrupt practices - Who may commit- - In terms of sub-

section (4) of Section 123 of the Representation of the People Act, corrupt practices may be committed by :

(a) The candidate;

(b) His agent, that is to say-

(i) An election agent;

(ii) A polling agent;

(iii) Any person who is held to have acted as an agent in connection with the election with the consent of the candidate. 7 Ins. by U.P. Act No. 7 of 1949. 8 Subs. by ALO 1950. 1 Mercy Kutty Amma V. Kadavoor Sivadasan and another, (2004) 2 SCC 217.

(c) By any other person with the consent of the candidate or his election agent. 2 3. Corrupt practice - meaning of. - Sub-section (4) of Section 123 of the Representation of the People Act says that the publication by a candidate or this agent or by any other person with the consent of a candidate or his election agent, of any statement or fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of the election of that candidate amounts to a corrupt practice.

29. Section 29 :-

* * *]

29A. Section 29A :-

[* * *] Control of 1 [Municipality]

30. Power Of State Government To Dissolve The Municipality :-

If at any time the State Government is satisfied that a municipality persistently makes default in the performance of duties imposed upon it by or under this Act or any other law for the time being in force or exceeds or abuses more than once its powers, it may, after having given the municipality a reasonable opportunity to show cause why such order should not be made, by order, published with the reasons therefor in the Official Gazette, dissolve the municipality.]

31. Section 31 :-

31A. Consequences Of Dissolution Of Municipality :-

Where a municipality is dissolved under Section 30, the following consequences shall follow :

(a) All members of the municipality including the President shall, on a date to be specified to the order, vacate their offices as such but without prejudice to their eligibility for re-election or re-nomination;

(b) Until the constitution of the new municipality - 2 Mercy Kutty Amma V. Kadavoor Sivadasan and another, (2004) 2 SCC 217. 3 Mahendra Singh V. Gulab, (2005) 4 SCC 522. 4 Omitted by U.P. Act No. 7 of 1953. 5 Omitted by U.P. Act No. 7 of 1953. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. (i) all powers, functions and duties of the municipality, its President and Committees shall be vested in and be exercised, performed and discharged by such person or persons as the State Government may appoint in that behalf and such person or persons, shall be deemed in law to be the municipality, the President or the Committee, as the occasion may require;

(ii) such salary and allowances of such person or persons as the State Government may by general or special order in that behalf fix, shall be paid out of Municipal fund;

(iii) the State Government may, from time to time, by notification in the Official Gazette, make such incidental or consequential provisions, including provisions for adapting, altering or modifying any provisions of this Act, without affecting the substance, as may appear to it to be necessary or expedient for carrying out the purposes of this section.]

31B. Director Of Local Bodies :-

(1) The State Government shall appoint an officer to be the Director of Local Bodies, Uttar Pradesh.

(2) In addition to the function expressly assigned to him by or under this Act, the Director shall exercise such powers of the State Government in relation to the affairs of a 1 [Municipality] (not being powers under Section under 30) as the State Government may, by notification in the Gazette, and subject to such conditions and restrictions (including the conditions of review by itself) as may be specified in such notification, delegate to him.

32. Supervision By Prescribed Authority :-

The 2 [Prescribed Authority] may, -

(a) inspect, or cause to inspected, 3 [by an officer not below the rank of Sub-Divisional Officer] any immovable property used or occupied by a 4 [Municipality] or Joint Committee or any work in progress under the direction of a 5 [Municipality] or of such committee;

(b) by order in writing call for and inspect a book or document in the possession or under the control of a 6 [Municipality] or of such committee; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949. 3 Ins. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. (c) by order in writing require a 7 [Municipality] or such committee to furnish such statement, accounts, reports or copies of documents, relating to the proceedings or duties of the 8 [Municipality] or committee, as 9 [it] thinks fit to call for; and

(d) record in writing for the consideration of a 10 [Municipality] or

of such committee, any observations as 11 [it] thinks proper in regard to the proceedings or duties of the 12 [Municipality] or committee. NOTE It is not repudiated that Section 32 of the Act empowers the prescribed authority, -

(a) to inspect or cause to be inspected, by an officer not below the rank of a Sub Divisional Officer, any immovable property used or occupied by a board of joint committee, or any work in progress under the direction of a board or of each committee;

(b) by order in writing call for an inspect a book or document in the possession or under the control of the board or of such committee;

(c) by order in writing require a board or such committee to furnish such statements, accounts, reports or copies of documents, relating to the proceedings or duties of the board or committee, as it thinks fit to call for and

(d) record in writing, for the consideration of a board or of such committee, any observations it thinks proper in regard to the proceedings or duties of the board or committee.

33. Inspection Of Municipal Works And Institution By Government Officers :-

A work, or institution, constructed or maintained, in whole or in part at the expenses of a 2 [Municipality], and all registers, books, accounts or other documents relating thereto, shall at all times be open to inspection by such officers as the 3 [State Government] appoints in this behalf. NOTE 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 7 of 1949. 12 Subs. by U.P. Act No. 12 of 1994. 1 Anis Ahmad V. State of U.P. and another, (2001) 1 SAC 350. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. Section 33 of the U.P. Municipalities Act postulates that a work, or institution, constructed or maintained, in whole or part at the expense of a board, and all registers, books, accounts or other documents relating thereto "shall at all times be open to inspection by such officers as the State Government appoints in this behalf".

34. Power Of The State Government Or The Prescribed Authority Or The District Magistrate To Prohibit Execution Or Further Execution Of Resolution Or Order Of Municipality :-

(1) 6 [The Prescribed Authority may], by order in writing, prohibit the execution or further execution of a resolution or order passed or

made under this or any other enactment by a 7 [Municipality] or a committee of a 8 [Municipality] or a joint Committee or any officer or servant of a 9 [Municipality] or of a joint Committee 10 [if in its opinion] such resolution or order is of a nature to cause or tend to cause obstruction, annoyance or injury to the public or to any class or body of persons lawfully employed 11 [* * *] and may prohibit the doing or continuance by any person of any act in pursuance for or under cover of such resolution or order. 1 [(1-A) The District Magistrate may, within the limits of his district, by order in writing, prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a 2 [Municipality] or a committee of a 3 [Municipality] or a Joint Committee or any officer or servant of a 4 [Municipality] or of a Joint Committee if in his opinion such resolution or order is of a nature to cause or tend to cause danger to human life, health or safety, or a riot or affray, and may prohibit the doing or continuance by any person of any act, in pursuance of or under cover of such resolution or order.] 5 [(1-B) The State Government may, on its own motion or on report or complaint received by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a 6 [Municipality] or a committee of a 7 [Municipality] or a Joint Committee or any officer or servant of a 8 [Municipality] or of a Joint Committee, if in its opinion such resolution or order is 4 Anis Ahmad V. State of U.P. and another, (2001) 1 SAC 350. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 7 of 1949. 11 Omitted by U.P. Act No. 7 of 1949. 1 Ins. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. prejudicial to the public interest, 9 [or has been passed or made in abuse of powers or in flagrant breach of any provision of any law for the time being in force], and may prohibit the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order.] 10 [(2) Where an order is made under sub-section (1) or (1-A) 11 [* * *], a copy thereof with a statement of the reasons for making it, shall forthwith be forwarded by the Prescribed Authority or the District Magistrate through the Prescribed Authority, as the case may be, to the State Government

which may thereupon, if it thinks fit, rescind or modify the order.]

(3) 12 [* * *]

(4) Where the execution or further execution of a resolution or order is prohibited by an order made under sub-section (1), (1-A) or (1-B) and continuing in force, it shall be the duty of the 13 [Municipality], if so required by the authority making the order under the said sub-sections to take any action which it would have been entitled to take, if the resolution or order had never been made or passed, and which is necessary for preventing any person from doing or continuing to do anything under cover of the resolution or order of which the further execution is prohibited. NOTE The Act postulates that a contract before entered into by the board, must be proceeded by a resolution. It was held that Section 34(1-B) empowers the State Government to cancel a resolution and it is not possible to read into it, a power to enter into a contract by the Board with a third party.

35. Power Of The State Government And Prescribed Authority In Case Of Default Of Municipality :-

(1) If at any time, upon representation made or otherwise, it appears to the State Government that 3 [a Municipality] has made default in performing a duty imposed on it by or under this or any other enactment, 4 [or in carrying out any order made or direction issued by the State Government in exercise of any power conferred by this Act or any other enactment] the State Government 5 [* * *] may (after calling for an explanation from the 6 [Municipality] and considering 9 Ins. by U.P. Act No. 26 of 1964. 10 Subs. by U.P. Act No. 7 of 1949. 11 Omitted by U.P. Act No. 12 of 1994. 12 Omitted by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994. 1 Smt. Suman Verma and others V. Special Secretary, Nagar Vikas Anubhag, (2004) 1 SAC 591. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 7 of 1953. 5 Omitted by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994.any objection by the 7 [Municipality] to action being taken under this section), by order in writing fix a period for the performance of that duty 8 [or the carrying out of that order or direction].

(2) If that duty is not performed 9 [or the order or direction is not carried out] within the period so fixed, the State Government 10 [* * *] may appoint the District Magistrate 11 [or any officer not below the rank of a Deputy Collector] to perform it and may direct

that the expense (if any) of performing the duty 12 [or executing the order or direction] shall be paid, within such time as may be fixed, to the District Magistrate by the 13 [Municipality].

(3) If the expense is not so paid, the District Magistrate, with the previous sanction of the State Government 14 [* * *] may make an order directing the person having the custody of the Municipal fund to pay the expense from such fund.

36. Extraordinary Powers Of District Magistrate In Case Of Emergency :-

(1) In case of emergency the District Magistrate may 1 [with the permission of the Prescribed Authority] provide for the execution of any work or the doing of any act which the 2 [Municipality] is empowered to execute or do and of which the immediate execution or doing, is in his opinion, necessary 3 [for the safety, protection or convenience of the public] and may direct that the expense of executing the work or doing the act shall be forthwith paid by the 4 [Municipality].

(2) If the expense is not so paid, the District magistrate may make an order directing the person having the custody of the Municipal fund to pay the expense from such fund.

(3) The District magistrate shall forthwith report to the 5 [Prescribed Authority] every case in which he uses the powers conferred on him by this section. Municipal members

37. Prohibition Of Remuneration To Members And President :-

No member or President of a 6 [Municipality] shall be granted any remuneration or traveling 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 26 of 1964. 9 Ins. by U.P. Act No. 7 of 1953. 10 Omitted by U.P. Act No. 12 of 1994. 11 Ins. by U.P. Act No. 7 of 1949. 12 Ins. by U.P. Act No. 7 of 1953. 13 Subs. by U.P. Act No. 12 of 1994. 14 Omitted by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. allowance by the 7 [Municipality] except with the sanction of State Government or in accordance with rules made in this behalf.

38. Term Of Office Of Members Elected Or Nominated To Fill Casual Vacancies :-

(1) The term of office of a member elected 9 [or nominated] to fill a casual vacancy or a vacancy remaining unfilled at the general election shall begin upon the declaration of his election 10 [or nomination] under the Act and shall be the remainder of the term of the 11 [Municipality].

(1-a) 12 [* * *]

(2) 13 [* * *]

(3) 14 [* * *]

(4) 15 [* * *]

(5) 1 [* * *] 38-A. 2 [* * *]

39. Resignation Of Members :-

If a member of a 4 [Municipality] other than the President resigns by writing under his hand addressed to the State Government, his seat shall thereupon become vacant. The resignation shall be delivered at the office of the District magistrate of the district, in which the municipality is situate who shall forthwith inform the President and shall forward the resignation to the State Government.]

40. Removal Of Members :-

(1) The State Government 6 [* * *] may remove a member of the 7 [Municipality] on any of the following grounds, -

(a) that he has absented himself from the meetings of the 8 [Municipality] for more than three consecutive months or three consecutive meetings 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 12 of 1994. 9 Ins. by U.P. Act No. 12 of 1994. 10 Ins. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Omitted by U.P. Act No. 5 of 1932. 13 Omitted by U.P. Act No. 7 of 1949. 14 Omitted by U.P. Act No. 5 of 1932. 15 Omitted by U.P. Act No. 5 of 1932. 1 Omitted by U.P. Act No. 1 of 1955. 2 Repeated by U.P. Act No. 17 of 1934. 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 7 of 1949. 6 Omitted by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. whichever is the longer period, without obtaining sanction from the 9 [Municipality] :] Provided that the period during which the member was in jail as an under trial, detenue or as a political prisoner, shall not be taken into account;

(b) that he has incurred any of the disqualifications mentioned in Sections 10 [12-D and 13-D];

(c) that he has within the meeting of Section 82, knowingly acquired or continued to hold, directly or indirectly, or by a partner,

any 11 [share or interest, whether pecuniary or of any other nature] in any contract by or on behalf of the 12 [Municipality];
 (d) that he has knowingly acted as a member in a matter other than a matter referred to in Section 82 in which he or a partner had, directly or indirectly a 13 [personal interest, whether pecuniary or of any other nature] or in which he was professionally interested on behalf of a client, principal or other person; 1 [* * *]
 2 [(e) that he being a legal practitioner has during the term of his membership acted or appeared in any suit or other proceeding on behalf of any person against the 3 [Municipality] or against the State Government in respect of nazul and entrusted to the management of the 4 [Municipality] or acted or appeared for or on behalf of any person against whom a criminal proceeding has been instituted by or on behalf of the 5 [Municipality];] 6 [(f) that he has abandoned his ordinary place or residence in or has voluntarily or otherwise transferred his residence from the municipal area concerned, unless the member himself resigns his seat within three months of such abandonment or transfer;] 7 [(g) that he has been guilty of president misbehaviour or disorderly conduct at meetings of the 8 [Municipality] and a complaint to that effect is 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 7 of 1953. 11 Subs. by U.P. Act No. 26 of 1964. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 26 of 1964. 1 The word "or" omitted by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964. 7 Ins. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. made to the State Government by the President or any other member; or] 9 [(h) that he has been guilty of any other misconduct whether as member or as Vice-President or President or as Vice-President exercising the powers of President whether committed before or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976].

(2) 10 [* * *] 11 [(3) The State Government may remove from the 1 2 [Municipality] a member who, in his opinion, while being a member during the current or the last preceding terms of the 13 [Municipality], acting as President or a Vice-President, or a VicePresident, or Chairman of a Committee or member, or in any other capacity whatsoever, has whether, before, or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976, so flagrantly abused his position, or

so wilfully contravened any of the provisions of this Act or any rule, regulation or bye-law, or caused such loss or damage to the fund or property of the 1 [Municipality], as to render him unfit to continue as a member.]

(4) Provided that 2 [when the State Government] proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned, and when such action is taken, the reasons therefor shall be placed on record.

(5) 3 [* * *] 4 [(6) Without prejudice to any of the foregoing powers, the State Government may on any of the grounds referred to in sub-section (1), instead of removing the member give him a warning.] Explanation. - The power of administering warning or placing a member under suspension under sub-section (6) may be exercised either by the State Government or the Prescribed Authority, as the case may be, while dealing with the matter originally under sub-section (1) or sub-section (3) or by the State Government on appeal under sub-section (2). 9 Subs. by U.P. Act No. 41 of 1976. 10 Omitted by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 41 of 1976. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. NOTES Enquiry

- Specific charge. - An enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly objectively and not subjectively. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct. 5 Opportunity to explain. - While dealing with the provisions of sub-section (4) of Section 40 of the Act, a Division Bench of the Court in Abdul Latif Nomani V. Commissioner, Gorakhpur 6 , held as under : "Then we have also held that the notices issued under Section 40(4) did not give to the two members, the opportunity of explanation contemplated by the provision Section 40(4) is a mandatory provision of law, and it is clear that before action is taken under Section 40(1), the Commissioner is bound to afford an opportunity of explanation to the member concerned. A denial of the rule of natural justice requiring a person to be heard before action is taken against him results in a null and void order.

41. Disability Of Members Removed Under Section 40 :-

(1) A member removed under clause (a) of sub-section (1) of the preceding section shall, if otherwise qualified, be eligible for further election 2 [* * *] or nomination.

(2) A member removed under clause (b) of sub-section (1) of the preceding section 3 [* * *] shall not be so eligible 4 [* * *] 5 [unless his disqualification no longer exists].

(3) A member removed under sub-section (3) of the preceding section shall not be so eligible for a period of 6 [five] years from the date of his removal : Provided that the State Government may for sufficient reason exempt any person from his disability.

(4) A member removed under any other provision of the preceding section shall not be so eligible until he is declared 7 [for reasons to be specified] to be no 5 Satish Chandra Sharma V. State of U.P. and others, (2004) 1 SAC 247. 6 AIR 1968 All 44. 1 Satish Chandra Sharma V. State of U.P. and others, (2004) 1 SAC 247. 2 Omitted by U.P. Act No. 7 of 1953. 3 Omitted by U.P. Act No. 7 of 1949. 4 Omitted by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 26 of 1964. longer ineligible, and he may be so declared, by an order of the State Government 8 .[* * *]

42. Section 42 :-

* * *] President and vice-President

43. Election Of President :-

(1) The President of the municipality shall be elected on the basis of adult suffrage by the electors in the municipal area.

(2) An outgoing President shall be eligible for re-election.

(3) The provision of this Act and the rules framed thereunder in relation to election (including disputes relating to election and electoral offences) of a member shall, mutatis mutandis, apply in relation to election of the President.

(4) If in a general election a person is elected both as member and President of the municipality or being a member of the municipality is elected President thereof in any bye-election, he shall, except as provided in Section 49, cease to be a member from the date of his election as President.]

43A. Bar On Simultaneously Holding The Post Of President Or Vicepresident In Different Local Authorities :-

No person shall be at the same time the President or Vice-President both of a 2 [Municipality] and any other local authority : Provided that if a person is elected to any such or similar office of more than one local authority, he shall, at his option, continue to hold the office in one local authority and resign from other within a prescribed period.]

43AA. Qualification For Presidentship :-

[(1) A person shall not be qualified to be chosen as President of a 4 [Municipality] unless he, -

(a) is an elector for any ward 5 [in the municipal area];

(b) has attained the age of thirty years on the date of his nomination as a candidate for election to the office of President;

(2) A person shall be disqualified for being chosen as, and for being, President of a 6 [Municipality] if he, - 7 Ins. by U.P. Act No. 7 of 1949. 8 Omitted by U.P. Act No. 12 of 1994. 9 Omitted by U.P. Act No. 7 of 1953. 10 Subs. by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 76 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 1 of 1955. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.(a) is or has become subject to any of the disqualification 7 [mentioned in clauses (a) to (g) and (i) to (k) of Section 13-D and the disqualification has not ceased or been removed under the said section; or (b) 8 .[* * *]

(3) 9 [* * *] NOTE Election of President - Age limit. - The state legislature is competent to legislate for fixing the age of president for contesting the election and the provisions under the Municipalities Act fixing the age limit at 30 years for the post of President is not violative of any fundamental right.

43B. Section 43B :-

. [* * *]

43BB. Transfer Of Petition :-

(1) On the application of any party to an election petition presented under sub-section (5) of Section 20 2 [* * *], and after notice to the other parties thereto, and after hearing such of them as desire to be heard, or of its own motion, without such notice, the High Court may at any stage, -

(a) transfer an election petition pending before a District Judge for trial to any other District Judge; or

(b) re-transfer the same for trial to the District Judge from whom it was withdrawn.

(2) The District Judge may at any stage transfer an election petition pending before him under this Act to an Additional District Judge and may withdraw any election petition pending before and Additional District Judge and, -

(i) transfer or dispose of the same; or

(ii) transfer the same for trial or disposal to any other Additional District Judge; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(3) Where any election petition has been transferred or re-transferred under sub-section (1) or sub-section (2), the District Judge or the Additional District Judge, 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Omitted by U.P. Act No. 4 of 1965 (w.e.f. 1.5.1958). 9 Omitted by U.P. Act No. 12 of 1994. 10 Dharam Vir Agarwal V. State of U.P. and others, (2001) 1 SAC 6. 11 Omitted by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 17 of 1982. 2 Omitted by U.P. Act No. 12 of 1994.who thereafter tries such petition, may, subject to any direction in the order of transfer to the contrary, proceed from the point at which it was transferred or re-transferred : Provided that he may, if he thinks fit, recall and re-examine any of the witnesses already examined.] NOTE Section 43-B and 43-BB

which deals with election petition and transfer of petition clearly lays down that the election petition shall be presented to the District Judge and the power of the High Court to transfer the election petition from one District Judge to any other District Judge. It is thus clear that the aforesaid provisions of the Act have been made applicable to two areas with regard to election matters.

43C. Power Of The State Election Commission To Make Order Regarding Election Of President :-

6 [In so far as provision with respect to any of the following matters is not made by this Act or the rules made thereunder, the State Election Commission may] by order, make provision with respect to the following matters concerning the conduct of 1 [* * *] election of President, that is to say, -

- (a) the appointment, powers and duties of Returning Officers;
- (b) appointment of dates for nomination, scrutiny, withdrawal and polling;
- (c) the manner of presentation and the form of nomination paper, the requirements for a valid nomination, scrutiny of nominations and withdrawal of candidature;
- (d) procedure at election, including death of candidate before poll and procedure of contested and uncontested elections;
- (e) hours of polling and adjournment of poll;
- (f) manner of voting at elections;
- (g) scrutiny and counting of votes including re-counting of votes and procedure to be followed in case of equality of votes;
- (h) declaration and notification of results;
- (i) deposit of security with nomination and return and forfeiture thereof; 3 Shiv Narain V. District Judge, Barabanki and others, 1990 RD 307. 4 Ins. by U.P. Act No. 17 of 1982. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1995. 1 Omitted by U.P. Act No. 12 of 1994.(j) to (r) 2 [* * *]

43D. Oath Of Allegiance And Office :-

(1) the President and every member of a 4 [Municipality] shall, before taking his seat, make and subscribe at a meeting of the 5 [Municipality] an oath or affirmation of his allegiance to the Constitution in the following form :- "I A. B., having been elected a member/President of this 6 [Municipality] do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, and that I will faithfully and conscientiously discharge the duties upon which I am about to enter."

(2) The President or the members who fails to make, within three months of the date on which his term of office commences or at any one of the first three meetings of the 7 [Municipality], held after the said date, whichever is later, unless this period is extended by the District Magistrate, the oath or affirmation laid down in and required to be taken by sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

(3) Any person required under sub-section (1) to make an oath or affirmation shall not take his seat at a meeting of the 1 [Municipality] or do any act as a member or President of the 2 [Municipality] unless he has made and subscribe an oath or affirmation as laid down under sub-section (1). 3 [(4) Within seven days of the constitution or reconstitution of the Municipality, the District Magistrate shall convene a meeting of the Municipality for the Administration of oath or affirmation in the manner prescribed in this section and such meeting shall be presided over by the District Magistrate or in his absence by a Deputy Collector nominated by him in this behalf. The meeting, so convened shall be treated as the First Meeting of the Municipality.]

(5) The Executive Officer shall, as soon as may be, report to the District Magistrate the name of the President or Member, if any, who ceases to hold his office under

sub-section (2)]. 2 Omitted by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 38 of 2006, published in the U.P. Gazette, Extraordinary, Part I, Sec. (ka), dated 11.12.2006. NOTE Oath. - Section 43-D of the Act provides that the President and every member of a board shall before taking its seat, make and subscribed at a meeting of the board, an oath or affirmation of his allegiance to the constitution in the form prescribed therein. Sub-section (2) provides that if the president and the members who fail to make within three months of the date on which his term of office commences or at anyone of the first three meetings of the board, held after the said dates whichever is later, unless this period is extended by the District Magistrate, the oath or affirmation laid down in and required to be taken by sub-section (1) shall cease to hold his office and his seat shall be deemed to have become vacant.

44. Section 44 :-

* * *]

44A. Bye-Election Of President :-

If a casual vacancy occurs in the office of the President owing to death or resignation or any other cause, the President shall be elected as soon as may be thereafter, but not later than three months from the date of occurrence of the said vacancy, in the manner provided in Section 43.]

45. Section 45 :-

46. Term Of Office Of A President :-

(1) Except as otherwise provided in this Act, the term of office of a President shall be co-terminous with the term of the 2 [Municipality].

(2) The term of office of a President elected in a casual vacancy shall be the remainder of the term of office of his predecessor.]

46A. Section 46A :-

[* * *]

47. Resignation Of President :-

(1) A President of a municipality wishing to resign may forward his written resignation through the District magistrate to the State Government.]

(2) On receipt by the 5 [Municipality] of information that the resignation has been accepted by the State Government 6 [* * *], such 7 [President] shall be deemed to have vacated his office. 4 Shabbir Khan and another V. State of U.P. and others, (2002) 1 SAC 71. 5 Omitted by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 7 Omitted by U.P. Act No. 35 of 1978. 1 Subs. by U.P. Act No. 41 of 1976. 2 Subs. by U.P. Act No. 12 of 1994. 3

Omitted by U.P. Act No. 5 of 1932. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Omitted by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. 47-A. 8 [* * *] 9 [UTTARAKHAND] AMENDMENT 10 [Section 47-A of the Principal Act shall be omitted.]

48. Removal Of President :-

(1) 11 [* * *]

(2) Where the State Government has, at any time, reason to believe that, -

(a) there has been a failure on the part of the President in performing his duties; or

(b) The President has -

(i) incurred any of the disqualifications mentioned in Sections 12-D and 43-AA; or

(ii) within the meaning of Section 82 knowingly acquired or continued to have, directly or indirectly or by a partner, any share or interest, whether pecuniary or of any other nature, in any contract or employment with by or on behalf of the 1 [Municipality]; or

(iii) knowingly acted as a President or as a member in a matter other than a matter referred to in clauses (a) to (g) of sub-section (2) of Section 32, in which he has, directly or indirectly, or by a partner, any share or interest whether pecuniary or of any other nature, or in which he was professionally interested on behalf of a client, principal or other person; or

(iv) being a legal practitioner acted or appeared in any suit or other proceeding on behalf of any person against the 2 [Municipality] or against the State Government in respect of nazul land entrusted to the management of the 3 [Municipality] or against the State Government in respect of nazul land entrusted to the management of the 4 [Municipality] or acted or appeared for or on behalf 8 Omitted by U.P. Act No. 22 of 2001 (w.e.f. 5.10.2001). 9 The word "Uttarakhand" subs. by Act No. 52 of 2006. 10 Omitted by Uttaranchal Act No. 11 of 2005. 11 Omitted by U.P. Act No. 7 of 1949. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. of any person against whom a criminal proceeding has been instituted by or on behalf of the 5 [Municipality]; or

(v) abandoned his ordinary place of residence in the municipal area

concerned; or 6 [(vii) during the current or the last preceding term of the 7 [Municipality], acting as President or Vice-President, or as Chairman of a Committee, or as member or in any other capacity whatsoever, whether before or after the commencement of the Uttar Pradesh Urban Local SelfGovernment Laws (Amendment) Act, 1976, so flagrantly abused his position, or so wilfully contravened any of the provisions of this Act or any rule, regulation or bye-law, or caused such loss or damage to fund or property of the 8 [Municipality] as to render him unfit to continue to be President; or (viii) been guilty of any other misconduct whether committed before or after the commencement of the Uttar Pradesh Urban Local Self-Government Laws (Amendment) Act, 1976 whether as President or as Vice-President, exercising the powers of President, or as VicePresident, or as member;] or 1 [(ix) caused loss or damage to any property of the municipality; or (x) misappropriated or misused of Municipal fund; or (xi) acted against the interest of the municipality; or (xii) contravened the provisions of this Act or the rules made thereunder; or (xiii) created an obstacle in a meeting of the municipality in such manner that it becomes impossible for the municipality to conduct its business in the meeting or instigated someone to do so; or (xiv) wilfully contravened any order or direction of the State Government given under this Act; or 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 41 of 1976. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 22 of 2001, Sec. 3(a) (w.e.f. 5.10.2001)..(xv) misbehaved without any lawful justification with the officers or employees of the municipality; or (xvi) disposed of any property belonging to the municipality at a price less than its market value; or (xvii) encroached, or assisted or instigated any other person to encroach upon the land, building or any other immovable property of the municipality;] it may call upon him to show cause within the time to be specified in the notice why he should not be removed from office. 2 [Provided that where the State Government has reason to believe that the allegations do not appear to be groundless and the President is prima facie guilty on any of the grounds of this sub-section resulting in the issuance of the show-cause notice and proceedings under this sub-section he shall, from the date of issuance of the show-cause notice containing charges, cease to exercise, perform and discharge the financial and

administrative powers, functions and duties of the President until he is exonerated of the charges mentioned in the show-cause notice issued to him under this sub-section and finalization of the proceedings under sub-section (2-A) and the said powers, functions and duties of the President during the period of such ceasing, shall be exercised, performed and discharged by the District Magistrate or an officer nominated by him not below the rank of Deputy Collector].

(2-A) 1 [* * *] 2 [* * *] 2 Ins. by U.P. Act No. 2 of 2005 (w.e.f. 27.02.2004). Validation. - Anything done or any action taken under the principal Act as amended by the Uttar Pradesh Municipalities (Amendment) Act, 2004 shall be deemed to have been done or taken under this Act as if this Act were in force at all material times (Vide U.P. Act No. 2 of 2005). 1 Omitted by U.P. Act No. 2 of 2005. Sub-section (2-A) (as ins. by U.P. Act No. 6 of 2004) prior to its omission stood as under :

(2-A) Where in an inquiry held by such person and in such manner as may be prescribed, if a President or a Vice-President is prima facie found to be guilty on any of the grounds referred to in sub-section (2), he shall cease to exercise, perform and discharge the financial and administrative powers, functions and duties of the President or the Vice-President, as the case may be, which shall, until he is exonerated of the charges mentioned in the show cause notice issued to him under sub-section (2), be exercised and performed by the District Magistrate or by an officer nominated by him not below the rank of the Deputy Collector. 2 Proviso omitted by Sec. 3(b) of U.P. Act No. 22 of 2001 (w.e.f. 5.10.2001). 3 [(2-B) An order passed by the State Government under sub-section (2-A) shall be final and shall not be questioned in any Court.]

(3) 4 [* * *] 5 [(4) A President removed under sub-section (2-A) shall also cease to be a member of the 6 [Municipality] and in case of removal on any of the grounds mentioned in clause (a) or sub-clause (vi), (vii) or (viii) of clause (b) of sub-section (2) shall not be eligible for re-election as President or member for a period of five years from the date of his removal.] 7 [UTTARAKHAND] AMENDMENT 8 [In Section 48 of the principal Act, in sub-section (2), in clause (b) after subclause (viii), the following sub-clause shall be inserted namely :

- (ix) caused loss or damage to any property of the Municipality; or
- (x) misappropriated or misused the Municipal fund; or
- (xi) acted against the interest of the Municipality; or
- (xii) contravened the provisions of this Act or the rules made

thereunder; or

(xiii) created an obstacle in a meeting of the Municipality in such manner that it becomes impossible for the Municipality to conduct its business in the meeting or instigated someone to do so; or

(xiv) wilfully contravened any order or direction of the State Government given under this Act; or

(xv) misbehaved without any lawful jurisdiction with the officers or employees of the Municipality; or

(xvi) disposed of any property belonging to the Municipality for a price less than its market value; or

(xvii) encroached, or assisted or instigated any other person to encroach upon the land, building or any other immovable property of the Municipality.] 3 Added by U.P. Act No. 26 of 1964. 4 Omitted by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 The word "Uttaranchal" subs.

by Act No. 52 of 2006. 8 Ins. by Uttaranchal Act No. 11 of 2005.1 [In sub-section (2-A) the proviso shall be omitted.] NOTES President - Suspension of. - It is noteworthy that the removal of an elected president can be done under Section 48 of the Act by the State Government whereas the impugned order has been passed by the Commissioner. Earlier Section 48(3) of the Act also provided for placing the president under suspension, but this provision has been deleted in 1994 by the legislature. There is, thus, no power now to suspend an elected president. 2 Amendment Act No. 6 of 2004. - The statement of objects and reasons of the amending Act makes it clear that the person facing the enquiry is deprived of his financial and administrative powers automatically by operation of law. Once the charge-sheet is served upon him, his administrative and financial powers cease and he cannot exercise the same and unless he is exonerated of the charges levelled against him, he cannot be permitted to exercise the said powers as mandatorily required by aforesaid provision. 3 Removal of Chairman - Recording of reasons. - In S.P. Goel V. State of U.P. 4 , it has been held that the President of Nagar Palika cannot be removed for any kind of misconduct. He can be removed only for some flagrant and serious misconduct but he cannot be removed for technical misconduct as that would undermine democracy and make elected persons easily removable by the executive. It has also been held in that decision that the State Government must deal with the representation given by the petitioner. In Naseemuddin V. State of U.P. 1 , a Division Bench of the Court held that the Chairman of Nagar Palika cannot be removed by the State Government without holding an enquiry

by the State Government and the State Government cannot simply act upon the report of the District Magistrate. In *Smt. Anwari Begum V. State of U.P.* 2 , it has been held that reasons must be recorded in the order removing the chairman. In *Om Prakash Gupta V. State of U.P.* 3 , it was held that recording reasons is mandatory.

4 Order of removal - Civil consequences. - The order of removal entails civil consequences. Sub-section (4) of Section 48 contemplates that a person removed under sub-section (2-A) of Section 48, is barred from contesting an election for a period of five years from the date of his removal.

5 1 Omitted by Uttaranchal Act No. 11 of 2005. 2 *Smt. Ishrat Bano V. The Commissionr, Azamgarh*, 1998 (89) RD 201. 3 *Zaheer Ahmad Ansari V. State of U.P. and others*, (2005) 1 UPLBED 40. 4 1992 AWC 394. 1 2000 (3) ESC 1611. 2 (2000) 2 SAC 718 (DB). 3 1991 LCD 458. 4 *Smt. R.S. Khan V. State of U.P. another*, (2002) 2 SAC 752. 5 *Dr. Shamim Ahmad V. State of U.P. and another*, (2004) 3 SAC 562.

Removal of President - A quasi-judicial proceeding. - Removal of a duly elected member is a quasi judicial proceeding in nature. 6 Undoubtedly, any elected office bearer in local self government has to be put on a higher pedestal than of a Government Servant. If the temporary Government employee cannot be removed on the ground of misconduct without holding a full-fledged enquiry, it is difficult to imagine how an elected office bearer can be removed without holding a full-fledged enquiry. In service jurisprudence, minor punishment is permissible to be imposed while holding the enquiry as per the procedure prescribed for it but for removal, termination or reduction in rank, a full-fledged inquiry is required otherwise it will be violative of the provisions of Article 311 of the Constitution of India. The case is to be understood in entirely different context than that of the Government employees for the reason that for the removal of the elected office bearers, a more stringent procedure and standard of proof is required.

7 Removal of an elected office bearer. - In a democratic institution like ours, the incumbent is entitled to hold the office for the term for which he has been elected unless his election is set-aside by a prescribed procedure known to law or is removed by the procedure established by law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority had applied its mind to the allegations made and the explanation furnished by the elected office-bearers sought to be removed.

8 Personal hearing - In *State of U.P. and another v. Nand Kumar Agrawal* 1 , while considering the provisions of Section 48, the

Honble Supreme Court held that personal hearing is not contemplated in the said provision, though of course, if the authorities think it fit, they may give the opportunity of personal hearing while holding appropriate enquiry. A Division Bench of this Court in Smt. R.S. Khan v. State of U.P. and others ² , placing reliance upon earlier judgment of the Court in S.P. Goel v. State of U.P. ³ and Naseemuddin v. State of U.P. ⁴ , held that depending upon the facts and circumstances of the case, the enquiry should be held complying with the principles of natural justice, giving opportunity of defence to the erring elected office bearer and State Government must pass a speaking and reasoned order considering the explanation of the elected office bearer. ⁵ Written notice of non-confidence. - A written notice of intention to make a motion of non-confidence on the President must be signed by such number of the ⁶ Indian National Congress, V. Institute of Social Welfare and others, (2002) ⁵ SCC 685. ⁷ Rameshwari Devi v. State of Rajasthan and others, AIR 1999 Raj 47. ⁸ Satish Chandra Sharma v. State of U.P. (2004) ¹ SAC 247. ¹ JT 2000 (7) SC 302. ² (2002) ² SAC 752. ³ 1992 AWC 394. ⁴ 2000(3) ESC 1611. ⁵ Satish Chandra Sharma v. State of U.P. & Others (2004) ¹ SAC 247. Board as constitute not less than one-half of the total strength of the Board and must be accompanied by a copy of the motion which it is proposed to make and should be delivered in person by any two of the members signing the notice to the District Magistrate. ⁶ Removal of President - Only to be based on a reasoned order. - The elected official is accountable to its electorate because he is being elected by a large number of voters. His removal has serious repercussions as he is removed from the post and declared disqualified to contest the elections for a further period of five years, but it also takes away the right of the people of his constituency to be represented by him. Undoubtedly, the right to hold such a post is statutory and no person can claim any absolute or vested right to the post, but he cannot be removed without strictly adhering to the provisions provided by the legislature for his removal. ⁷ A Division Bench of the Court in Smt. R.S. Khan v. State of U.P. and others ⁸ , placing reliance upon an earlier judgment of this Court in S.P. Goel v. State of U.P. ⁹ , and Naseemuddin v. State of U.P. ¹⁰ , held that depending upon the facts and circumstances of the case, the enquiry should be held complying with the principles of natural justice, giving opportunity of defence to the erring elected office bearer and State Government must pass a speaking and reasoned order considering the explanation of the

elected office bearer.

49. President To Be Member :-

The President of a municipality shall be ex officio member of the municipality.]

50. Functions Of A Municipality That Must Be Discharged By The President :-

The following powers, duties and functions of a 4 [Municipality] may be exercised, and shall be performed or discharged, by the 5 [President] of the 6 [Municipality] and 7 [subject to the provisions of Section 53 and 53-A] not otherwise, namely, - 6 Jai Charan Lal v. State of U.P., (1967) 3 SCR 981. 7 Vide Mohan Lal Tripathi v. District Magistrate, AIR 1993 SC 2042; Ram Beti v. District Panchaytraj Adhikari and others, AIR 1998 SC 1222; Jyoti Basu v. Devi Ghosal, AIR 1982 SC 983 and PUCL, (2003) 4 SCC 399 : AIR 2003 SC 2363. 8 (2002) 2 SAC 752. 9 1992 AWC 394. 10 2000 (3) ESC 1611. 1 Munna Lal Gupta v. State of U.P. and others, (2005) 2 SAC 465; 2005 (3) AWC 2812. 2 Subs.by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 7 Ins. by U.P. Act No. 26 of 1964.(a) the powers vested in the 8 [President] by Section 70, 9 [74 and the provisos to Sections] 75 and 76 to appoint, punish or dismiss servants of the 10 [Municipality];

(b) the determination, in accordance with any regulation in this behalf, of questions arising in respect of the service, 11 [transfer], leave, pay, privileges and allowances of servants of the 12 [Municipality]; 13 [(bb) general supervision over all officers and works of the 14 [Municipality]];

(c) the submission to the 15 [Prescribed Authority] under Section 32 of statements, accounts, reports, or copies of documents, and under subsections (4) and (5) of Section 94 and sub-section (1) of Section 108 of copies of resolution, passed by the 16 [Municipality] or by a committee of the 17 [Municipality];

(d) such of the powers, duties and functions referred to in the third column of Schedule 1 as are delegated by the 1 [Municipality] under Section 112 to the 2 [President]; and

(e) all other duties, powers and functions of a 3 [Municipality] the exception of, -

(i) where there is an executive officer, those vested in an executive officer by Section 60 4 [and where there is a medical officer of health, those vested in the medical officer of health by Section 60-

A].

(ii) those specified in the second column of Schedule 1; and

(iii) those delegated by the 5 [Municipality] under section 112.

NOTE 8 Subs. by U.P. Act No. 7 of 1949. 9 Ins. by U.P. Act No. 17 of 1934. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 7 of 1949. 12 Subs. by U.P. Act No. 12 of 1994. 13 Added by U.P. No. Act 7 of 1949. 14 Subs. by U.P. No. Act 12 of 1994. 15 Subs. by U.P. No. Act 7 of 1949. 16 Subs. by U.P. No. Act 12 of 1994. 17 Subs. by U.P. No. Act 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Added by U.P. Act No. 5 of 1932. 5 Subs. by U.P. Act No. 12 of 1994. Public functions and private functions. - It is difficult to draw a line between public functions and private functions when they are being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest.

51. Additional Duties Of The President :-

It shall also be the duty [and power] of the President. 8 [(a) unless provided otherwise by this Act or prevented by reasonable cause-

(i) to convene and preside at all meeting of the 9 [Municipality];

(ii) 10 [* * *]

(iii) otherwise to control in accordance with any regulation made in this behalf the transaction of business at all meetings of the 11 [Municipality];]

(b) to watch over the financial and superintend the executive administration of the 1 [Municipality] and bring to the notice of the 2 [Municipality] any defect therein; and

(c) to perform such other duties as are required of, or imposed on him by or under this 3 [or any other] Act.

51A. Authority To President To Address State Government On Question Of General Public Interest :-

A President may address the State Government or any Department of the State Government on any question of general public interest in the manner prescribed.]

52. Power Of Municipality To Require Reports, Etc. From President :-

(1) The [Municipality] may require the 7 [President] to furnish it with, - 6 Binny Ltd. v. Sadasivan, (2005) 6 SCC 657. 7 Ins. by U.P. Act No. 7 of 1949. 8 Ins. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Omitted by U.P. Act No. 13 of 1942. 11 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 7 of 1949. 4 Ins. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. (a) any return, statement, estimate, statistics or other information regarding any matter appertaining to the administration of the municipality;

(b) a report or explanation on any such matter; and

(c) a copy of any record, correspondence or plan or other document which is in his possession or control as 8 [President] or which is recorded or filed in his office or in the office of any municipal servant.

(2) The 9 [President] shall comply with every requisition made under subsection (1) without unreasonable delay.

(3) Nothing in this section or in any other provision of this Act shall be deemed to prevent the 10 [Municipality] from making regulations authorizing the asking of questions by members at its meetings, subject to such conditions and restrictions as may be prescribed in the regulations.

53. Delegation By President Of His Powers And Duties To The Vicepresident :-

(1) A President may empower, by general or special order 13 [the VicePresident] to exercise under his control any one or more of his powers, duties or functions except those specified in clauses (a) and (b) of Section 51.

(2) An order by the 1 [President] under sub-section (1) may prescribe any condition, and impose any restrictions, in respect of the exercise of any powers, the performance of any duty or the discharge of any function.

(3) In particular, such order may prescribe the condition that any order by 2 [the Vice-President] in the exercise of a power conferred on him by sub-section (1) shall be liable to rescission or revision by the 3 [President] upon appeal to the 4 [President] within a specified time.

53A. Delegation By President Of Powers Under Clause (A) Of Section 50 :-

(1) A President may empower by general or special order any servant of the 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 7 of 1949. 12 Subs by Sec. 4(a) of U.P. Act No. 23 of 2001 (w.e.f. 5.10.2001), for "a Vice- President". 13 Subs by Sec. 4(b) of U.P. Act No. 23 of 2001 (w.e.f. 5.10.2001), for "any Vice-President". 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 23 of 2001, Sec.4(c) (w.e.f. 5.10.2001), for "a Vice- President". 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 7 of 1949.5 [Municipality] to exercise under his control any one or more of the powers specified in clause (a) of Section 50.

(2) An order of the 6 [President] under sub-section(1) may prescribe any condition, and impose any restriction in respect of the exercise of any power.

(3) Any order passed by a servant of the 7 [Municipality] in the exercise of a power conferred on him under sub-section (1) shall be liable to rescission or revision by the 8 [President].

54. Election, Term Of Office And Resignation Of Vice-President :-

(1) Every municipality shall have a Vice-President elected, as occasion arises, from amongst its elected members by the electorates consisting of President, elected members, ex officio members and nominated members of the municipality and the voting at such election shall be by secret ballot.

(1-a) A person securing the highest number of votes in an election under subsection (1) shall be declared elected and in the case of equality of votes, the returning officer shall decide by lot and declare the person elected on whom the lot falls.] 1 [(2) The term of office of 2 [the Vice-President] of any description shall be one year from the date of his election or the residue of his term of office as a member of the municipality, whichever is less.]

(3) 3 [The Vice-President] wishing to resign may intimate in writing his intention to do so to the 4 [President] and on his resignation being accepted by the 5 [Municipality], he shall be deemed to have vacated his office. 6 [(4) The election of 7 [the Vice-President] under sub-section (1), (2) and (3) shall be completed within three months from the date of the due constitution of the 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 7 of 1949. 10 Subs. by Sec. 5(a) of U.P. Act No. 23 of 2001 (w.e.f. 5.10.2001). 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 23 of 2001, Sec.5(c) (w.e.f. 5.10.2001) for "a Vice- Presidnet". 3 Subs. by U.P. Act No. 23 of 2001, (w.e.f. 5.10.2001) for "any Vice-Presidnet". 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 41 of 1976. 7 Subs. by U.P. Act No. 23 of 2001 (w.e.f. 5.10.2001) for "a Vice-President".8 [Municipality], as notified under Section 56 or from the date of occurrence of the vacancy, as the case may be.] 9

[UTTARAKHAND] AMENDMENT Sub-section (2) shall be substituted as under : 10 [(2) The term of office of a Vice-Chairman shall be two years and six months from the date of his election or the residue of his term as a member, whichever is less.

(3) The provisions of aforesaid sub-section (2) shall also apply to the Vice-Chairman, who is declared elected in the last election.]

NOTES Nature of the Section. - Section 54 of the Act provides for the election, term of office and resignation of Vice-President. The term of office has been provided in sub-section (2) of Section 54 of the Act providing one or residue period of membership which ever is less. Article 14 of the Constitution cannot be involved on the ground that the term of the office of Vice-President under some other enactment is wider than Section 54(2) in as much as the Vice-President in respect of other authorities or bodies are a separate and distinct class by itself than that of the VicePresident elected under the U.P. Municipalities Act. 11 Election of Senior Vice-President. - In view of the decision of the Full Bench of the Court in Kalyan Dutt Kaushik v. District Magistrate, Hardwar 1 , the election of the petitioner as senior Vice-President under Section 54 was clearly without jurisdiction and void. The Full Bench has held that if the election of VicePresident of the Board is held within three months of its constitution then it must be held in accordance with Section 54(1) of the Act but if it is held thereafter, it must be held in accordance with Section 54-A(2) where a totally different procedure is prescribed. Since the petitioners election was held after three months of the constitution of the Board, it could only have been held in accordance with Section 54-A. 2 Election of Vice-President - Occasion for. - Sub-sections (1), (2) and (3) of Section 54 lay down three situations in which the election of a Vice-President of Board has to take place. One such occasion is where an elected president is in existence, sub-section (4) prescribed a common period of limitation within which an 8 Subs. by U.P. Act No. 12 of 1994. 9 The word "Uttaranchal" subs. by Act No. 52 of 2006. 10 Subs. by Uttaranchal Act No. 11 of 2005. 11 Abdul Qayyum v. State of U.P., AIR 1998 All 223. 1 1991 (2) UPLBEC 911. 2 Sarjoo Prasad Niranjana v. District Magistrate, Jalaun and others, 1991 (Suppl) RD 481. election of a Vice-President in all the three situations has to take place. The opening words of sub-section (2) of Section 54-A enjoin that the meeting for the election of a Vice-President shall be held subject to the provisions of sub-section (4) of Section 54, namely within a period of three months from the date of occurrence of the vacancy. Thus the legislative

intendment is that in all situations a Vice-President is to be elected in accordance with the procedure provided in sub-sections (2) to (9) of Section 54-A. The said sub-sections of section 54-A will have full play even when an elected President is available to convene a meeting for electing a Vice-President and for presiding over the same.

3 Election of Vice-President - Procedure of. - The Full Bench in the case of *Kalyan Dutt Kaushik v. District Magistrate* 4 , has, while interpreting Section 54 and 54-A of the Act, laid down that if a Vice-President is not elected within a period three months prescribed under sub-section (4) of Section 54, he must be got elected by the District Magistrate in accordance with the procedure prescribed under sub-sections (2) to (9) of Section 54-A. Consequently if a Vice-President is elected in accordance with sub-section (4) of Section 54, after three months from the date of constitution of the board, such an election is void. Sub-section (4) of Section 54 and sub-section (2) to (9) of Section 54-A provides different procedures for election of Vice-President. Under sub-section (4) of Section 54, Vice-President has to be elected at a meeting which is convened and presided over by the President of the Board, whereas under Section 54-A, the meeting is required to be convened by the District Magistrate which has to be presided over by a Civil Judicial Officer. President of the Board loses the right to convene and preside over the meeting of the Board for electing the VicePresidents after expiry of three months from the date of constitution of the Board.

5 Vice-President - Election of. - Section 54(1) of the U.P. Municipalities Act states that the Vice-President shall be elected from not merely elected members of the Municipal Board but also nominated members of the Municipal Board. 1 2 [54-A]. Provision for exercise of powers etc., of 3 [President] in certain contingencies 4 - .[* * *] 5 [Where a person on being elected President fails or refuses to function or is otherwise not able to function, or a casual vacancy occurs in the office of the President within the meaning of Section 44-A, and no Vice-President has been elected in accordance with this Act, or there is no Vice-President otherwise able to function, the powers and functions of the President shall, until a President or VicePresident is able to function, be exercised and performed by the District magistrate or 3 Municipal Board]

Bachhrawa v. Divisional Commissioner, Moradabad and others, 1990 RD 57. 4 (1991) 2 UPLBEC 911. 5 *Shyam Kumar Nirmal v. The MunicipalBoard*, 1992 (Suppl) RD 380. 1 *Khaliquz Zaman v. State of U.P. and others*, (2005) 1 SAC 357. 2 Sub-section (1) renumbered as Sec. 54-A by

U.P. Act No. 23 of 2001. 3 Subs. by U.P. Act No. 7 of 1949. 4 The words "and Procedure for election of Vice-President", omitted by U.P. Act No. 23 of 2001, Sec. 6(a). 5 Subs. by U.P. Act No. 41 of 1976. by gazetted officer not below the rank of a Deputy Collector appointed by the District Magistrate in this behalf, and such officer shall be called the Administrator, 6 [and all powers, functions and duties of the President shall be vested in and be exercised, performed and discharged by him.]

(2) to (9) 7 [* * *]

55. Duties Of Vice-President :-

(1) 9 [The Vice-President], -

(a) shall in the absence of the 10 [President] from a meeting of the 11 [Municipality] and unless prevented by reasonable cause, preside, regulate and conduct of business, and maintain and enforce order, at the meeting, and when so presiding may exercise the powers specified in Section 91];

(b) shall, during a vacancy in the office of 12 [President] or in the capacity of temporary absence of the 13 [President] perform any other duty and, when occasion arises, exercise any other power of the 14 [President];

(c) shall at any time perform any duty and exercise when occasion arises, any power delegated to him by the 15 [President] under Section 53.

(2) 1 [* * *] 2 [(3) The provisions of Section 48 shall apply mutatis mutandis to the Vice-President in respect of the performance of any duty or exercise of any powers under this Section.]

56. Notification Of Elections, Nominations And Vacancies :-

Every election and nomination of a member or President of a 4 [Municipality], the due constitution of the 5 [Municipality], and every vacancy in the office of members or 6 [President] shall be notified in the Official Gazette.] 6 Subs. by U.P. Act No. 12 of 1994. 7 Sub-section (2) to (9) omitted by U.P. Act No. 23 of 2001, Sec. 6(c). 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 23 of 2001, for "A Vice-President". 10 Subs. by U.P. Act No. 7 of 1949. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 7 of 1949. 13 Subs. by U.P. Act No. 7 of 1949. 14 Subs. by U.P. Act No. 7 of 1949. 15 Subs. by U.P. Act No. 7 of 1949. 1 Omitted by Sec. 7(b) of U.P. Act No. 23 of 2001. 2 Ins. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 1 of 1955. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No.

7 of 1949. The executive officer and medical officer of health

57. Power Of Municipality To Appoint And Employ Executive Officer And Medical Officer Of Health :-

9 [(1) Every 10 [Municipality] shall, unless the State Government either on its own motion or on representation made by the 11 [Municipality], otherwise directs, appoint an Executive Officer by a special resolution.] Provided that in every case in which such 12 [Municipality] has at the time of passing of the Act a Secretary but no Executive Officer, the Secretary shall be deemed to be the Executive Officer, until or unless he is duly replaced.

(2) Every 13 [Municipality] with an income of Rs. 50,000 per annum or over, shall, unless the State Government otherwise directs, employ a Medical Officer of Health who belongs to the 14 [Uttar Pradesh Provincial Medical and Health Service], and an Accountant who belongs to the State Accounts Service, on such terms and conditions as may be prescribed by the State Government : 15 [Provided that if the State Government expresses its inability to make available the services of a Medical Officer of Health belonging to the 16 [Uttar Pradesh Provincial Medical and Health Service], the 1 [Municipality] may appoint a temporary Medical Officer of Health by a special resolution.]

(2-A) Every 2 [Municipality] shall, if so required by the State Government, employ in addition to or in place of the Accountant, an Accounts Officer nominated by the State Government either severally or jointly with one or mote than one 3 [Municipality] or any other local authority on the terms and conditions as may be prescribed by the State Government, from time to time. 4 [(3) Every appointment of an Executive Officer under sub-section (1) and of a Medical Officer of Health under the provisio to sub-section (2) made by a 7 Subs. by U.P. Act No. 5 of 1932. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994. 14 Subs. by U.P. Act No. 12 of 1994. 15 Added by U.P. Act No. 26 of 1964. 16 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 [Municipality] shall be subject to the prior approval of the State Government and their salaries and conditions of service shall be such as may be prescribed.]

58. Punishment, Dismissal Or Removal Of Executive Officer

And Transfer Of Medical Officer Of Health :-

(1) A 7 [Municipality] may dismiss, remove or otherwise punish its Executive Officer by a special resolution supported by not less than two thirds of the members constituting the 8 [Municipality] subject to his right of appeal to the State Government, within such time and in such manner as may be prescribed : Provided that the 9 [Municipality] shall, in dismissing, removing or otherwise, punishing the Executive Officer, follow the procedure that may be prescribed in this behalf.

(2) 10 [* * *]

(3) If a 11 [Municipality] by special resolution recommend the transfer of its Medical Officer of Health 12 [other than one appointed under the proviso to subsection (2) of Section 57] or its Accountant, the State Government shall transfer the Medical Officer of Health or the Accountant as the case may be from the 13 [Municipalities] employment provided the 14 [Municipality] gives sufficient reasons therefor.

59. Appointment Of Officiating Executive Officer :-

(1) During the absence on leave, or other temporary vacancy in the office of an Executive Officer, if the period of such leave or vacancy does not exceed two months, the President may appoint a person to act as Executive Officer; and if the period exceeds two months an appointment shall be made by the 2 [Municipality] in accordance with the provisions of Section 57 : Provided that when the period of vacancy which initially did not exceed two months, is subsequently extended due to unforeseen circumstances, the appointment made by the President may continue subject to the approval of the State Government.] 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Omitted. by U.P. Act No. 26 of 1964. 11 Subs. by U.P. Act No. 12 of 1994. 12 Ins. by U.P. Act No. 26 of 1964. 13 Subs. by U.P. Act No. 12 of 1994. 14 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994.

(2) Every person so appointed may exercise the powers and shall perform the duties conferred or imposed by or under this or any other enactments on the person for whom he is appointed to act. 3

[(3) The salaries and conditions of service appertaining to such appointments shall be such as may be prescribed, and the provisions of Section 58, with such modifications as may be

prescribed, shall apply to persons so appointed.]

60. Functions Of A Municipality That Must Be Discharged By The Executive Officer :-

(1) In any municipality where there is an Executive Officer appointed under Sections 57, 59 or 65 the following powers of the 5 [Municipality] shall be exercised by such officer, and subject to the provisions of Section 62 not otherwise, namely, -

(a) the power to grant and issue under his signature, or to refuse, any licence which can be granted by a 6 [Municipality], other than a licence for market, slaughter house or hackney carriage;

(b) the power to suspend or withdraw any such licence;

(c) the power to receive, recover, and credit to the municipal fund any sum due or tendered to the 7 [Municipality];

(d) the powers conferred by the section or sub-sections specified in the first column of Schedule II 8 [or where such sections or sub-sections are followed by the words in part by such parts thereof as are indicated by the description in Column 2 of the said Schedule] and the power to do all things necessary for the exercise of these powers;

(e) in respect of servants of the 1 [Municipality], the powers vested in the Executive Officer by Sections 75 and 76, and the power to grant leave of absence to the holder of any post to which he has power to appoint;

(f) any other power that has been delegated by the 2 [Municipality] to the Executive Officer. 3 [(2) 4 [* * *] 5 [All] servants of the 6 [Municipality] shall be subordinate to Executive Officer. 3 Subs. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 2 of 1919. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Re-numbered by U.P. Act No. 2 of 1919. NOTE Executive Officer - Powers of. - A joint reading of clauses (a) and (b) of Section 60(1) of the Act shows that the Executive Officer has power to grant only those licences which can be suspended or withdrawn by him. The licences which cannot be withdrawn or suspended by him cannot be granted by him. Object of clause (b) of Section 60(1) of the Act is obvious. The Executive Officer has no power to grant any such licence which cannot be suspended or withdrawn by him. Clauses (a) and (b) of Section 60 of the Easement Act will have no application to the licences granted by

the Executive Officer under Section 60 of the U.P. Municipalities Act.

60A. Function To Be Discharged By Medical Officer Of Health :-

Notwithstanding anything contained in Section 60, the State Government may, by notification in the Official Gazette direct that in any municipality, the Medical Officer of Health 9 [subject to the general control] of the Executive Officer shall exercise the following powers; provided that in case of disagreement between these officers the question shall be referred to the President, whose decision shall be final, -

(a) the power to grant and issue under his signature every permit or licence, other than a permit or licence for a market or slaughter-house, which can be granted by a 10 [Municipality] in respect of bye-laws framed under Parts B, D, F, G and I of List I and Part I of List II of Section 298;

(b) the power to suspend or withdraw any such permit or licence;

(c) the powers conferred on the Executive Officer under Section 60(1)(d) in respect of Sections 191 (1) and (2), 192 (1), 196 (c) and (d), 201 (1), 202 (1), 225 (1) and (2), 227, 244 (1) and (2), 245 (1), 249, 250 (2), 267, 268, 269, 270, 271, 273 (1) (a), 276, 277, 278, 280, 283, 294 and also in respect of 307 so far as the notice referred to therein relates to the other sections specified in this clause;

(d) in respect of servants of the 1 [Municipalities] employed for conservancy, public health, vaccination, and the registration of births and deaths the powers vested in the Executive Officer by Sections 75(a) and 76(a) and the power to grant leave of absence to the holder of any post to which he has power to appoint.] 4 Omitted by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 26 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Madan Lal Bhatia v. Municipal Board, Moradabad, (2003) 2 SAC 680. 8 Ins. by U.P. Act No. 5 of 1932. 9 Subs. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

60B. Delegation Of Powers To Principal Officers Of The Electrical, Public Works [* * *] And Water Works Department :-

The State Government may, by notification in Official Gazette, direct that in any municipality the principal officers of the Electrical, Public Works, 4 [* * *] and Water Works Departments 5 [and of Municipal Museum] shall exercise, with reference to their departments 6 [or museum], powers under clause (e) of sub-section (1) of Section 60, and anything done in exercise of powers conferred under the provisions of this section shall be deemed to be thing done and power exercised by the Executive Officer].

61. Right To Appeal From Orders Of Executive Officer :-

(1) No appeal shall lie to the 7 [Municipality] from order passed by an Executive Officer 8 [or Medical Officer of Health] in the exercise of the powers conferred upon him by Section 60 9 [or Section 60-A] unless, -

(a) the order is an order against which an entry is shown in the third column of Schedule II, such entry not being avoided by regulation made under clause (e) of sub-section (1) of Section 297 and in force; or

(b) the order is an order passed in respect of a licence and

provision is made for appeal therefrom by any bye-law.

(2) Where an appeal lies it shall be filed within ten days of the communication of the order or of date on which the order is, under the provisions of this Act, deemed to have been communicated.

(3) When an appeal is filed within such period, the order shall remain suspended until the appeal is decided.

62. Delegation Of Powers By Executive Officer Or Medical Officer Of Health :-

(1) With the sanction of the President an Executive Officer, or a Medical Officer of Health may empower, by general or special order, any servant of 2 [Municipality] to exercise, under his control, any power, other than a power delegated to him under clause (f) of sub-section (1) of Section 60 conferred on him by or under this Act;] 2 Ins. by U.P. Act No. 7 of 1949. 3 Omitted. by U.P. Act No. 7 of 1953. 4 Omitted by U.P. Act No. 7 of 1953. 5 Ins. by U.P. Act No. 26 of 1964. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Added by U.P. Act No. 5 of 1932. 9 Added by U.P. Act No. 5 of 1932. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994.

(2) An order by the Executive Officer 3 [Medical Officer of Health] under subsection (1) may prescribed any condition and impose any restriction in respect of the exercise of any power.

(3) Any order passed by a servant of the 4 [Municipality] in the exercise of a power conferred on him under sub-section (1) shall be liable to rescission or revision by the Executive Officer 5 [or Medical Officer of Health] 6 [as the case may be].

63. Power Of President Or Municipality Or Committee To Rquire Report Etc., From Executive Officer Or Medical Officer Of Health :-

(1) 8 [President or the], 9 [Municipality], or any committee of the 10 [Municipality], may require from the Executive Officer 11 [or Medical Officer of Health], -

(a) any return, statement, estimate, statistics or other information regarding any matter appertaining to 12 [that branch of the administration of the municipality with which he is concerned];

(b) a report or explanation on any such matter; and

(c) a copy of any record, correspondence or plan or other document which is in his possession or under his control as Executive Officer 13 [or Medical Officer of Health] or which is recorded or filed in his office or in the office of any servant subordinate to him.

(2) The Executive Officer 14 [or Medical Officer of Health] shall comply with every requisition made under sub-section (1) without unreasonable delay.

64. Right Of Executive Officer Or Medical Officer Of Health To Take Part In Discussions :-

The Executive Officer, 1 [Accounts Officer] 2 [or Medical Officer of Health] may, within the permission of the 3 [President], or in virtue of a resolution passed in this behalf at a meeting of the 4 [Municipality] or of a committee, make an explanation in regard to a subject under discussion, but shall not vote upon or make a proposition at such meeting. 3 Added by U.P. Act No. 5 of 1932. 4 Subs. by U.P. Act No. 12 of 1994. 5 Added by U.P. Act No. 5 of 1932. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Ins. by U.P. Act No. 5 of 1932. 12 Ins. by U.P. Act No. 5 of 1932. 13 Ins. by U.P. Act No. 5 of 1932. 14 Ins. by U.P. Act No. 5 of 1932. 1 Ins. by U.P. Act No. 7 of 1953. 2 Ins. by U.P. Act No. 5 of 1932. 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994.

65. Power Of State Government To Appoint Executive Officer :-

If a 6 [Municipality] being bound to make an appointment under the provisions of Section 57 or Section 59, fails to make an appointment 7 [* * *] within such time as the State Government considers reasonable, the State Government may itself make the appointment and may fix the salary, contributions to provident fund or pension and other conditions appertaining to such appointment : Provided that if the State Government has made an appointment in exercise of the powers conferred by this section, the 8 [Municipality] shall not be bound to pay a sum exceeding a monthly average of Rs. 1,000 in case of Municipalities with an income of three lakhs or over or of Rs. 500 in the case of other municipalities on account of the salary, leave, allowances and contributions of the person so appointed.] Other Servants

66. Appointment Of Secretaries :-

(1) Every 9 [* * *] municipality where there is no Executive Officer shall, by special resolution appoint one or more Secretaries. 10 [(2) Each such appointment shall be subject to prior approval of the Prescribed Authority and the salaries and other conditions of service

of the person so appointed shall be such as may be prescribed.]

66A. Appointment Of Officiating Secretary :-

(1) During the absence or leave, or other temporary vacancy in the office of a Secretary appointed under Section 66, if the period of such leave or vacancy does not exceed two months, the President may appoint a person to act as Secretary, and if the period exceeds two months an appointment shall be made by the 12 [Municipality] in accordance with the provisions of Section 66.

(2) When the period of vacancy in which appointment has been made under the first part of sub-section (2) is subsequently extended beyond two months due to unforeseen circumstances the appointment made by the President may continue subject to the approval of the State Government.

(3) Every person so appointed may exercise the powers and shall perform the duties conferred or imposed by or under this or any other enactment on the person for whom he is appointed to act.

(4) The salary and other conditions of service of a person appointed under subsection (1) shall be such as may be prescribed.] 5 Subs. by U.P. Act No. 5 of 1932. 6 Subs. by U.P. Act No. 12 of 1994. 7 Omitted by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. 9 The words "board of a", omitted by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1964. 11 Ins. by U.P. Act No. 26 of 1964. 12 Subs. by U.P. Act No. 12 of 1994.

67. Punishment And Dismissal Of Secretaries :-

A 2 [Municipality] may dismiss, remove or otherwise punish any Secretary appointed under Section 66 or Section 66-A, by special resolution supported by not less than two thirds of the members constituting the 3 [Municipality], subject to his right of appeal to such authority, within such time and in such manner, as may be prescribed. Provided that the 4 [Municipality] shall in dismissing, removing or otherwise punishing the Secretary, follow the procedure that may be prescribed in this behalf.]

68. Appointment Of Special Officers Of Technical Department :-

(1) A 6 [Municipality] may, and if so required by the State Government, shall by special resolution, appoint the principal officers of its technical department such as Civil Engineer, Assistant Civil Engineer, Electrical Engineer, Assistant Electrical Engineer, Water Works Engineer, Assistant Water Works Engineer, Electrical and Water Works Engineer, Assistant Electrical and Water Works Engineer or Overseer and also Secretary where there is already an Executive Officer and Superintendent or Lady Superintendent of Education.

(2) During the absence on leave, or other temporary vacancy in the office of any of the officers mentioned in sub-section (1), if the period of such leave or vacancy does not exceed two months, the

President may appoint a person to act in such office; if the period exceeds two months an appointment shall be made by the 7 [Municipality] in accordance with the provisions of sub-section (1).

(3) When the period of vacancy in which appointment has been made under the first part of sub-section (2) is subsequently extended beyond two months due to unforeseen circumstances, the appointment made by the President may continue subject to the approval of the State Government.

(4) Every person appointed under sub-section (2) may exercise the powers and shall perform the duties conferred or imposed by or under this or any other enactment on the person for which he is appointed to act.

(5) Each appointment made under sub-section (1) or the second part of subsection (2) shall be subject to the prior approval of the State Government.

(6) The salary and other conditions of service of a person appointed under this section shall be such as may be prescribed.] 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.

68A. Compliance By Municipality Of Requisition By State Government For Servants In Times Of Emergency :-

On the occurrence of war, famine, scarcity, epidemic disease of men, or beasts, flood, or any similar emergency, and to provide for fairs, melas or other occasion, involving large gathering of people, the 2 [Municipality] shall immediately comply with any requisition made by the State Government or by an officer of the Government authorized by general or special order to make the requisition, for the services of any of the 3 [Municipalities] officers or officials holding posts in its medical, public health, sanitary, vaccination, veterinary, 4 [electrical, water works] or Public Works Departments for the services of any vaidya or hakim employed by the 5 [Municipality], and shall meet such proportion of the charge connected with the requisitioning as the State Government may decide to be a proper charge on the 6 [Municipality].

68B. Section 68B :-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force and without prejudice to the generality of the powers conferred by this Act or the rules made thereunder the Executive Officer of concerned Municipality, may at any time by general or special order direct any regular, ad hoc or contractual employee of the Municipality, who goes or remains on or otherwise takes part in any strike which has been prohibited by an order under sub-section (1) of Section 3 of the Uttar Pradesh Essential Services Maintenance Act, 1966 to resume duty by the day or hour and in the manner specified in the order.

(2) Notwithstanding anything to the contrary contained in any other provisions of

this Act or the rules made thereunder :-

(a) the employment or contract of a regular, ad hoc or contractual employee of the Municipality shall become void with effect from the day or hour specified in the order referred to in sub-section (1) if the employee fails to resume duty in response to the said order;

(b) where the employment or contract of a regular, ad hoc or contractual employee becomes void under clause

(a), the services of such employee shall stand terminated and such employee shall not be entitled to any notice before the termination of his services and no disciplinary enquiry shall be required before such action.

(3) In particular and without prejudice to the generality of the foregoing provisions of this section, the Municipality shall not be liable for payment of salary of any such employee beyond the day or hour specified in the order referred to in subsection (1). 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Ins. by U.P. Act No. 38 of 2006. 68-C. The Executive Officer of concerned Municipality shall, notwithstanding anything to the contrary contained in any other provisions of this Act or the rules or regulations made thereunder be competent to appoint on temporary basis any person possessing the requisite qualifications for discharging the duties of the post of the employee referred to in Section 68-B.]

69. Punishment And Dismissal Of Officers Appointed Under Section 68 :-

(1) A 2 [Municipality] may, by special resolution, dismiss, remove or otherwise punish any officer appointed under Section 68 or the proviso to sub-section (2) of Section 57, subject to the conditions provided in Section 58 in respect of the dismissal, removal or other punishment of an Executive Officer.]

(2) 3 [* * *]

69A. Framing Charges Against Or Suspension Of Officers By President :-

(1) If the President has reason to believe that the Executive Officer or the Secretary or any of the other officers of the 5 [Municipality] appointed under Section 68 6 [or the proviso to sub-section (2) of Section 57] is corrupt or has persistently failed in the discharge of the duties or is otherwise guilty of misconduct, he may frame charges against him and where he is satisfied that it is so necessary, he may, for reasons to be recorded, suspend him pending the completion of the enquiry 7 [and the passing of the final order by the Prescribed Authority or the 8 [Municipality], as the case may be, under sub-section (4)]. 9 [(2) Whenever the President takes action under sub-section (1), he shall within a week inform the Prescribed Authority and also forward to it a copy of the charges, and in case an order of suspension has been passed, the President shall also forward to the Prescribed Authority the material forming the basis of the charges.] 1 [(2-A) The order of the suspension under sub-section (1) may at any time be revoked or modified by the Prescribed Authority.]

(3) The enquiry under sub-section (1) shall be carried on in such manner as may be prescribed by rules. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 26 of 1964. 4 Ins. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 26 of 1964. 7 Ins. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 26 of 1964. 1 Ins. by U.P. Act No. 26 of 1964. 2 [(4) After enquiry is completed, the President shall submit the record with his recommendations to the Prescribed

Authority or to the 3 [Municipality], as he may consider fit. The Prescribed Authority or the 4 [Municipality], as the case may be, shall thereupon, notwithstanding anything contained in sub-section (1) of Section 58 or Section 67 or Section 69, proceed to consider the report and may, after such further enquiry as it may deem necessary, dismiss, remove or otherwise punish or exonerate the Executive Officer or Secretary or other Officer, as the case may be : Provided that the 5 [Municipality] shall act under this sub-section through a special resolution supported by not less than two thirds of the members constituting the 6 [Municipality].

(5) An appeal against an order of dismissal, removal or other punishment passed under sub-section (4) by the Prescribed Authority or the 7 [Municipality], shall lie to the State Government within such time and in such manner as may be prescribed.

69B. Centralisation Of Services Of Municipal Officers And Servants :-

[(1) Notwithstanding anything contained in Sections 57, 59, 65 to 68, 69, 69-A, 71, 74, 79 and 80, the State Government may at any time, by rules provided for the creation of one or more services of such officers and servants as the State Government may deem fit, common to all or some 10 [Nagar Panchayats or Municipal Councils or to the Nagar Panchayats, Municipal Councils, Municipal Corporation and Jal Sansthan in the State] and prescribe the methods of recruitment and conditions of service of persons appointed to any such service.]

(2) When any such service is created, officers and servants serving on the posts included in the service may, if found suitable, be absorbed in the service, provisionally or finally and the services of others shall stand determined, in the prescribed manner : 1 [Provided that such absorption in the service shall not operate as a bar against holding or continuing to hold any disciplinary proceedings against a member of the service in respect of act committed before the date of such absorption.] 2 Subs. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 29 of 1966. 9 Subs. by U.P. Act No. 5 of 1984. 10 Subs. by U.P. Act No. 12 of 1994. 1 Ins. by U.P. Act No. 15 of 1983.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), such rules may also provide for consultation with the State Public Service Commission in respect of any of the matters referred to in the said sub-sections.] 2

[(4) Notwithstanding anything contained in the preceding sub-sections (1), (2) and (3) or any other provision of Act, the State Government may by rules also provide for regularization of temporary and ad hoc appointments made before the prescribed date, without consultation with the State Public Service Commission.] 3

[Explanation. - For the purposes of this sub-section it is clarified that services common to the Nagar Panchayats and Municipal Councils or Nagar Panchayats, Municipal Councils, Municipal Corporation and Jal Sansthan in the districts of Garhwal and Kumaon Divisions of the State may be created.] NOTE Section 69-B of the Act provides for centralization of services of Municipal officers and servants. This can be done despite Sections 57, 59, 65 to 69-A, 71, 74 and 80 of the Act. These sections more or less empower the Municipal Boards (including Nagar Panchayats) to make appointments and to take disciplinary action against their employees.

70. Temporary Servants Required For Emergency :-

The power to appoint and fix the salaries of temporary servants in case of emergency shall vest in the 5 [President] subject to the following conditions, namely, - 6 [(a) the President, in exercise of such powers, shall not act in contravention of -

(j) any general or special directions as the State Government may,

from time to time; issue;

(ii) an order of the 7 [Municipality] prohibiting the employment of temporary servants for any particular work; and]

(b) each appointment under this section by the 1 [President] shall be reported at the next meeting of the 2 [Municipality] following the appointment. NOTE 2 Ins. by U.P. Act No. 15 of 1983. 3 Ins. by U.P. Act No. 12 of 1994. 4 Dinesh Chandra Srivastava v. Director, Local Bodies, Directorate, U.P., Allahabad, (2001) 1 SAC 346. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 15 of 1983. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. Section 70 of the Act provides that the president of the Board may appoint a temporary servant but the appointment made by him is to be rectified by the Board in the meeting held immediately after the appointment was made.

71. Power Of Municipality To Determine Permanent Staff :-

Except as provided by Sections 57, 66, 58 and 70, 6 [and subject to any general or special directions as the State Government may, from time to time, issue] a 7 [Municipality] may, by 8 [special], resolution, determine what servants are required for the discharge of the duties of the 9 [Municipality] and 10 [their qualifications and conditions of service]. NOTE Section 71 of the Act, provides that the Board may, by special resolution, determine that the servant was required for duties of the Board and their qualifications and conditions of service. Thus the power of appointment of a clerk vests in the board and not in the president of the Board.

72. Combination Of Offices :-

Subject to the provisions of this Act or of and rule a 12 [Municipality], 13 [President of Executive Officer, as the case may be,] may appointed one person to discharge the duties of any two or more officers.

73. Appointment, Etc. Of Servants On The Educational Establishment :-

(1) Subject to the provisions of sub-section (2), the appointment of persons on the educational establishment of a 15 [Municipality] shall be made by 16 [such] authority as may be specified in this behalf by the State Government, and different authorities may be specified for different classes of posts on the establishment. 3 Arun Kumar Chaubey v. Administrator, Nagar Palika, Mirzapur and another, (2001) 2 SAC 454. 4 Subs. by U.P. Act No. 5 of 1932. 5

Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1964. 11 Arun Kumar Chaubey v. Administrator, Nagar Palika, Mirzapur and another, (2001) 2 SAC 454. 12 Subs. by U.P. Act No. 12 of 1994. 13 Ins. by U.P. Act No. 26 of 1964. 14 Subs. by U.P. Act No. 7 of 1953. 15 Subs. by U.P. Act No. 12 of 1994. 16 Subs. by U.P. Act No. 26 of 1964.(2) The State Government may make rules regulating the recruitment, punishment, 1 [* * *] appeal and other conditions of service of persons appointed to the educational establishment of a 2 [Municipality];] 3 [Provided that the appointment of a teacher or Head of an institution shall be governed by the provisions of the Uttar Pradesh State Universities Act, 1973, or the Intermediate Education Act, 1921, as the case may be.]

74. Appointment And Dismissal Of Permanent Superior Staff
:-

Subject to the provisions of Section 57 to 73, servants on posts in the non-centralized service, carrying scale of pay equal to or higher than the lowest scale of pay admissible to the clerical staff, shall be appointed and may be dismissed, removed or otherwise punished, or the services of a probationer may be terminated, by the President, subject to the right of appeal, except in the case of the termination of the service of a probationer, to such authority within such time and in such manner as may be prescribed. : Provided that appointments on the posts of Tax Superintendent, Assistant Tax Superintendents, Inspectors, Head Clerks, Sectional Head Clerks, Sectional Accountants, Doctor, Vaid, Hakims and Municipal Fire Station Officers, shall be subject to the approval of the 5 [Municipality].]

75. Appointment Of Permanent Inferior Staff :-

Except as otherwise provided, the Executive Officer shall appoint servants carrying scales of pay lower than the lowest scale of pay referred to in Section 74 : Provided that in the case there is no Executive Officer, the said appointment shall be made by the President.]

76. Punishment And Dismissal Of Permanent Inferior Staff
:-

Except as otherwise provided, the Executive Officer, and where there is no Executive Officer, the President may dismiss, remove or

otherwise punish servants of the 8 [Municipality], or terminate the services of probationers, 9 [referred to in Section 75] subject to their right of appeal, except in the case of the termination of the service of a probation, to such authority within such time and in such manner as may be prescribed.] 1 Omitted by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 10 of 1978. 4 Subs. by U.P. Act No. 15 of 1983. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 15 of 1983. 7 Subs. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 15 of 1983.

77. Limitation Of Powers Conferred By Section 71 To 76 :-

(1) The provisions of Sections 71, 73, 74, 75 and 76 shall be subject to the provisions of, -

(a) Section 78, and

(b) any rule, in particular of any rule imposing any conditions on the appointment of persons to offices, or any particular office, requiring professional skill and on the suspension or dismissal 1 [removal or other punishment or discharge or termination of service] of persons so appointed.

(2) The provisions of Section 74, 75 and 76 shall also be subject to the provisions of any regulation raising any maximum or minimum monthly salary prescribed in those sections with reference to the respect powers of the 2 [Municipality], the 3 [President] and the Executive Officer over the staff.

77A. Powers Of Appellate Authority In Disciplinary Matters :-

The Appellate Authority to which an appeal against an order of dismissal, removal or other punishment is preferred under this Act or the rules may, -

(a) set aside, reduce or confirm the penalty; or

(b) remit the case to the authority which imposed the penalty with such directions as it may deem fit.]

77B. Power Of Suspension :-

(1) The authority competent to punish an officer or servant of the 6 [Municipality] may place him under suspension, -

(a) where a disciplinary proceeding against him is contemplated or pending; or

(b) where a criminal case against him in respect of an offence involving moral turpitude is under investigation, enquiry or trial.

(2) Where a penalty of dismissal or removal imposed upon an officer or servant of 7 [Municipality] is set aside in appeal under this Act or the rules and the case is remitted for further inquiry or action or with any other directions, the officer or servant shall be deemed to have been placed or continued under suspension on and from the date of the original order of dismissal or removal. 1 Ins. by U.P. Act

No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 7 of 1949. 4 Ins. by U.P. Act No. 26 of 1964. 5 Ins. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.(3) Where a penalty of dismissal or removal imposed upon an officer or servant of the 1 [Municipality] is set aside or declared or rendered void in consequence of or by a decision of a Court of law, and the punishing authority, on a consideration of the circumstances of the case decides to hold a further enquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the officer or servant shall be deemed to have been placed or continued under suspension by the punishing authority on and from the date of the original order of dismissal or removal.

(4) An order of suspension made or deemed to have been made under this section may at any time to be revoked by the authority which made or is deemed to have made the order or by the Appellate Authority.

(5) 2 [Municipality] the act under this section, by a special resolution supported by not less than two-thirds of the members constituting the 3 [Municipality].

(6) An officer or servant who is placed or is deemed to have been placed under suspension shall, during the period of such suspension, be entitled to receive, instead of salary, such subsistence allowance as may be prescribed.] NOTE Section 77-B of the Act provides for suspension of an employee of a Municipal Board. Its sub-section (1) provides that the authority competent to punish an officer and servant of a board may suspend him. Its sub-section (5) provides that the board shall act under this section by special resolution supported by not less than two-third members constituting the board. 4 Special provisions as to certain servants

78. Pension And Dismissal In Case Of Servants Of The Government Employed By Municipality Or Vice Verse :-

(1) A [Municipality] shall contribute to the pension and leave allowances of any servant.

(a) whose services are lent or transferred by Government to the 7 [Municipality]; or

(b) whose services are lent or transferred by the 1 [Municipality] to Government; or 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Dinesh Chandra Srivastava v. Director, Local Bodies, Directorate, U.P., Allahabad and others, (2001) 1 SAC 346. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.(c) who is employed partly by Government and partly by the 2 [Municipality].

(2) Such contribution shall be to the extent prescribed by any general rules or special orders made by 3 [the Government concerned].

(3) A 4 [Municipality] shall not, without the assent of Government, dispense with the services of any servant described in clause (a) or (c) of sub-section (1), or finally dismiss from its service any servant described in clause (b) or sub-section (1), unless it has given Government at least six months notice.

(4) In this section "Government" shall mean the 5 [Central Government] or any 6 [State Government].

79. Leave Allowances, Provident Fund, Annuities And Gratuities :-

(1) In every case where a 7 [Municipality] is entitled to pay a salary to any officer or servant, it shall subject to any regulations in this behalf, be entitled to pay leave allowances to such officer or servant.

(2) A 8 [Municipality] may establish and maintain a provident fund and may itself contributes thereto.

(3) A 9 [Municipality] may grant a gratuity, upon his retirement, to a n y servant of the 10 [Municipality] who is excluded from participation in the benefits of the provident fund.

(4) The 11 [Municipality] may, with the previous sanction of the State Government, grant or arrange for the purchase of an annuity to, -

(a) any servant who, at the date of his retirement, has not been contributing to a provident fund established under sub-section (2) or has contributed thereto of a period of less than 10 years; and

(b) any officer or servant injured, otherwise than by reason of his own default, in the execution of his duty, or where such injury results in death, the family of such officer or servant. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. 4 Subs. by U.P. Act No.12 of 1994. 5 Subs. by ALO 1950. 6 Subs. by ALO 1950. 7 Subs. by U.P.Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994.(5) A 1 [Municipality] may, with the like sanction, instead of taking action under clause (b) of sub-section (4), grant a compassionate allowance to an officer or servant referred to therein, or to the family of such officer or servant.

80. Limitations Of Powers Conferred By The Previous Section :-

The provisions of Section 79 shall be subject to the condition that the 2 [Municipality] shall not, within the special sanction of the 3 [State Government], grant to any officer or servant or to his family a pension, annuity or gratuity greater in amount than that to which he or it would have been entitled, under any general or special orders of the Central Government or 4 [State Government], if the service qualifying for the pension, annuity or gratuity had been service under that Government for the same time, on the same pay, and in other respects of the same character. Liability of

members, officers and servants

81. Surcharge :-

(1) The President, the Vice-President, and every member, officer and servant of the 6 [Municipality] shall be liable to surcharge for the loss, waste and misapplication of any money or property of the 7 [Municipality], its such loss, waste or misapplication is a direct consequence of his neglect or misconduct while acting as such President, Vice-President, member, officer or servant : Provided that such liability shall cease to exist after the expiry of ten years from the occurrence of such loss, waste or misapplication or after the expiry of five years from the date on which such President, Vice-President, member, officer or servant ceases to hold his office, whichever is later.

(2) The amount of surcharge so imposed shall be recoverable as if it were an arrear of land revenue and the Collector on being satisfied that the sum is due shall proceed to recover it as such an arrear.

(3) The procedure of surcharge and the manner of the recovery of the amount involved in loss, waste or misapplication shall be such as may be prescribed.

(4) Where no surcharge proceedings are taken the 1 [Municipality], with the previous sanction of, or on being directed by, the Prescribed Authority, may institute a suit for compensation against such person.] 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 41 of 1976 and shall be deemed always to have been substituted.. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

82. Penalty On Member Or President Acquiring Interest In Contract, Etc :-

A member 2 [or President] of a 3 [Municipality] who, otherwise than with the permission in writing of the Prescribed Authority knowingly acquires, or continues to have directly or indirectly, by himself or his partner, any 4 [share or interest, whether pecuniary or of any other nature] in any contract or employment, with, by, or i n behalf of the 5 [Municipality], shall be deemed to have committed an offence under Section 168 of the Indian Penal Code : Provided that a person shall not be deemed for the purposes of sub-section (1) to acquire, or continue to have, any 6 [share or

interest, whether pecuniary or of any other nature] in a contract or employment by reason only of his, -

- (a) having a 7 [share or interest, whether pecuniary or of any other nature] in any lease, sale or purchase of land or buildings, or in any agreement for the same, provided that such 8 [share or interest, whether pecuniary or of any other nature] was acquired before he became a member, or
- (b) having a share in a joint stock company which shall contract with, or be employed by, or on behalf of, 9 [Municipality], or
- (c) having a 10 [share or interest, whether pecuniary or of any other nature] in a newspaper in which an advertisement relating to the affairs of the 11 [Municipality] is inserted, or
- (d) holding a debenture or otherwise being interest in a loan raised by, or on behalf of, the 12 [Municipality], or
- (e) being retained by the 13 [Municipality] as a legal practitioner, or
- (f) having a 1 [share or interest, whether pecuniary or of any other nature] in the occasional sale of an article in which he regularly trades to 2 [Municipality] to a value not exceeding, in any one 2 Added by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1964. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. year, such amount as the 3 [Municipality], with the sanction of the 4 [State Government] fixes in this behalf, or
- (g) being a party to an agreement made with the 5 [Municipality] under the provisions of Section 196
- (c) or of Section 229.

83. Provision Against Servants Being Interested In Contract, Etc :-

(1) A person who has directly or indirectly, by himself or his partner, a 6 [share or interest, whether pecuniary or of any other nature] in a contract with, by, or on behalf of a 7 [Municipality] or in any employment with, under, by, or on behalf of, a 8 [Municipality], other than as a municipal servant, shall be disqualified for being a servant of such 9 [Municipality].

(2) A municipal servant who shall acquire or continue to have directly or indirectly, himself or his partner a 10 [share or interest, whether pecuniary or of any other nature] in any such contract or employment as aforesaid shall cease to be a municipal servant, and his office shall become vacant.

(3) A municipal servant who knowingly acquires or continue to have, directly or indirectly, a 11 [share or interest, whether pecuniary or of any other nature] in a contract or, except in so far as concerns his employment as a municipal servant, in any employment with, under, by, or on behalf of, a 12 [Municipality] of which he is a servant, shall be deemed to have committed an offence under Section 168 of the Indian Penal Code (Act No. XLV of 1860).

(4) Nothing in this section shall apply to any such 13 [share or interest, whether pecuniary or of any other nature] in a contract employment with under, by, or on behalf of, the 14 [Municipality] as is referred to in clauses (b), (d) and (g) of subsection (2) of Section 82 or to any 15 [share or interest, whether pecuniary or of any other nature] acquitted or retained, with the permission of the 16 [Prescribed Authority], in any lease, sale or purchase of land or buildings, or in any agreement for the same. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1964. 11 Subs. by U.P. Act No. 26 of 1964. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 26 of 1964. 14 Subs. by U.P. Act No. 12 of 1994. 15 Subs. by U.P. Act No. 26 of 1964. 16 Subs. by U.P. Act No. 7 of 1949.

84. All Officers And Servants Of A Municipality To Be Deemed Public Servants :-

Every officer or servant of 2 [Municipality] shall be deemed to be a public servant within the meaning of the Indian Penal Code (Act No. XLV of 1860) and in the definition of "legal remuneration" in Section 161 of that Code, the word "Government" shall, for the purposes of this section, be deemed to include a 3 [Municipality].

85. Penalty On Specified Municipal Servants For Failure To Discharge Their Duties :-

(1) A sweeper employed by the 4 [Municipality] who, -

(a) except in accordance with the terms of written contract of

service, or with the permission of the 5 [Municipality] resigns or abandons his employment, or

(b) without a reasonable cause of which notice has, when possible, been given to the 6 [Municipality], absents himself from his duties. shall be liable upon conviction to imprisonment which may extend to two months.

(2) The 7 [Prescribed Authority] may direct that on and from a specified future date the provisions of sub-section (1) shall apply also to any other specified class of servants employed by a 8 [Municipality] whose functions intimately concern the public health or safety : Provided that when a 8a [Prescribed Authority] makes an order under this subsection, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the State Government which may thereupon rescind the order or direct that it continue in force, with or without modification, permanently or for such period, as it thinks fit. NOTE Non-performance of statutory duties - Relying on the decision in Municipal Council, Ratlams case 9 , the Supreme Court in Dr. B.L. Wadehra v. Union of India 10 , directed the Municipal Corporation Delhi and the New Delhi Municipal Council to 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 12 of 1994. 8a Subs. by U.P. Act No. 7 of 1949. 9 AIR 1980 SC 1622. 10AIR 1996 SC 2969. perform its statutory duties of scavenging and cleaning the city. The Supreme Court did not accept the grounds of inadequacy of funds or insufficiency of machinery for non-performance of their statutory obligations. 1 1 Suo Motu v. State of Rajasthan and others, AIR 2005 Raj 82.

CHAPTER 3

CONDUCT OF BUSINESS

86. Meetings Of A Municipality :-

(1) There shall be at least one meeting of the 3 [Municipality] in every month to be held on a day fixed by regulation or of which notice has been given in a manner provided by regulation in this behalf : 4 [(2) The President may convene a meeting whenever he thinks fit and shall, upon a requisition made in writing by not less than one-fifth of the members of the 5 [Municipality] and served on the President or sent by registered post acknowledgement due

addressed to the 6 [Municipality] at their office, convene a meeting within a period of 7 [fifteen days] from the date of the service or receipt of such requisition.] 8 [Provided that the President may, for reasons to be recorded, postpone a meeting, other than a meeting convened on the requisition of members as above, by giving such notice as may be provided by regulation in this behalf.]

(3) A meeting may be adjourned until the next or any subsequent day, and an adjourned meeting may be further adjourned in the like manner.

(4) Every meeting shall be held at the municipal office (if any) or other convenient place of which notice has been duly given. 9 [(5)

The President shall report to the District Magistrate the name of any member who has, without obtaining sanction from the 10 [Municipality], absented himself from the meetings of the 11 [Municipality] for more than three consecutive months or three consecutive meetings, whichever is the longer period.] NOTES 2

Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of

1994. 4 Subs. by U.P. Act No. 9 of 1933. 5 Subs. by U.P. Act No.

12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P.

Act No. 26 of 1964. 8 Ins. by U.P. Act No. 26 of 1964. 9 Ins. by

U.P. Act No. 26 of 1964. 10 Subs. by U.P. Act No. 12 of 1994. 11

Subs. by U.P. Act No. 12 of 1994. Meeting - A meeting is a

proceeding which takes place only after the municipality is

constituted. An election is a process prior to the constitution of the

Municipality and hence it cannot be regarded as a meeting of the

municipality. 1 Sub-section (4) of Section 86 provides that every

meeting shall be held at the municipal office (if any) or other

convenient place of which notice has been duly given. This

provision makes it clear that ordinarily the meeting shall be held at

the office of the Municipal Board concerned. 2 Meeting-Meaning of -

Meeting has been defined in Shorter Oxford Dictionary as an

assembly of a number of people for entertainment, discussion or

the like. The learned authors M. Kaye Kerr and H.W. King in their

book titled "Procedures for Meeting and Organizations" 1984

edition, at page 63 have stated that a meeting is a gathering of

individuals, delegates, or representatives who desire to accomplish

a particular common purpose. The purpose of the meeting must be

clearly identified as the first stage in the planning process. Thus,

meeting is an assembly of a number of people for discussion or the

like.

87. Transaction Of Business At Meetings :-

Subject to any provision to the contrary made by regulation in this behalf, any business may be transacted at any meeting : Provided that no business which is required to be transacted by a special resolution shall be transacted unless previous notice of the intention to transact such business has been given : Provided also that nothing in this section shall apply to the motion that the 4 [Municipality] shall adopt a resolution expressing non-confidence in the President or to a motion that the 5 [Municipality] shall adopt a resolution calling upon the President to resign.

87A. Section 87A :-

[* * *] 7 [UTTARAKHAND] AMENDMENT [Section 87-A of the principal Act shall be omitted]

88. Quorum :-

(1) It shall be necessary for the transaction of any business other than business which is required to be transacted by a special resolution that not 1 Khaliquz Zaman v. State of U.P. and others, (2005) 1 SAC 357. 2 Municipal Board, Jaspur v. District Magistrate, Nainital, 1991 (Suppl.) RD 53. 3 Anugrah Narain Singh v. State of U.P., (2006) 1 SAC 1. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Omitted by U.P. Act No. 22 of 2001, Sec.4 (w.e.f. 5.10.2001). 7 The word "Uttaranchal" subs. by Act No. 52 of 2006. 8 Omitted by Uttaranchal Act No. 11 of 2005. less than one-third of the total members of the 1 [Municipality] for the time being shall be present.

(2) It shall be necessary for the transaction of business which is required to be transacted by special resolution that not less than one-half of such members shall be present : Provided that, when it is necessary to postpone any business at a meeting for want of the prescribed quorum, the 2 [President] after the transaction of such business can be transacted, shall adjourn the meeting to another date, and the business postponed for want of the prescribed quorum shall be transacted on such date, or in the event of a further adjournment of the meeting to a subsequent date, on such subsequent date, notwithstanding any deficiency in the number of members present. NOTE The fact that the quorum required for a special resolution is different from the quorum required for an ordinary resolution and the fact that a municipal tax can only be imposed by a special resolution indicates that an administrator cannot impose a Municipal Tax. An administrator cannot be deemed to be the municipal board for all purposes as is evident from the

use of the words so far as may be in Section 31(b). Hence, it is only when an elected Municipal Board is in existence that a Municipal tax can be imposed.

89. President Of Meeting :-

It at a meeting neither 4 [President] nor a 5 [VicePresident] is present, the members present shall elect one of their members to be the 6 [President] of the meeting, and such 7 [President] shall perform all the duties, and may exercise all the powers of the 8 [President] of a 9 [Municipality] when presiding at a meeting.

90. Publicity Of Meeting :-

Every meeting shall be open to the public unless the 10 [President] thereof considers that the public should be excluded during the whole or any part of the meeting.

91. Power Of President Of Meeting To Maintain Order :-

Where at a meeting of the 11 [Municipality], any member or other person refuses to comply with any 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949. 3 Bisauli Vyapar Mandal, Badaun and others v. State of U.P. and others, (2004) 3 SAC 389 (FB). 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 7 of 1949. 11 Subs. by U.P. Act No. 12 of 1994. direction of the 1 [President] ruling any business, discussion or matter out of order, or otherwise regulating the conduct or members or business or where any member or person willfully disturbs the meeting, the 2 [President] may require that member or person to withdraw from the meeting and, in the even of this omitting to do so, may employ against him such force as is necessary or as in good faith he believes to be necessary, for the purpose of removing and excluding him from the meeting.

92. Decision By Vote :-

(1) All questions which may come before a meeting of a 3 [Municipality] shall be decided by a majority of the votes of the members present and voting : 4 [Provided that where the President 5 [* * *] is of opinion that the decision of any question (including the budget estimates and proposals of taxation) by the 6 [Municipality] by a majority of votes of the members present and voting is against the interest of the 7 [Municipality], he may refer the same with his comments to the Director, who may, with the

previous approval of the State Government, take such decision thereon (which may be in supersession or partial modification of the decision of the 8 [Municipality] as he thinks fit, and his decision shall have effect as if it were a decision of the 9 [Municipality] : Provided further that the Director may, pending his final decision, give such interim decisions as he thinks fit and such direction, shall have effect as if they were decisions of the 10 [Municipality].]

(2) In case of an equality of votes, the 11 [President] of the meeting shall have a second or casting vote.

(3) The foregoing provisions of this section shall be subject to the provisions of sub-section (6) of Section 94 and of any other provision of, or under this or any other enactment requiring a resolution to be supported by any proportion or number of the members.

93. Right Of Certain Officers To Attend And Speak At Meetings :-

The [Chief Engineer, Uttar Pradesh Jal Nigam, the Director of Medical Health and Family 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 41 of 1976. 5 The words "of a board referred to in sub-section (2) of Section 43", omitted by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 7 of 1949. 12 Subs. by U.P. Act No. 12 of 1994. Welfare, Uttar Pradesh or the Assistant Director, Medical Health and Family Welfare, Uttar Pradesh, the Medical Officer] of the district, the Executive Engineer, the Inspector of Schools, and any other officer specially authorized by the State Government in this behalf shall be entitled to attend a meeting of the 1 [Municipality] and to address the 2 [Municipality] on any matter affecting their respective departments. NOTE Section 93 gives the right to the Chief Engineer, Local Self Government Engineering Department, the Director of Medical and Health Services or the Assistant Director of Medical and Health services, the Civil Surgeon, the Executive Engineer, the Inspector of Schools and any other officer specially authorized by the State Government in this behalf to attend a meeting of the board and to address the board on any matter affecting their respective departments. A combined reading of Section 86, 90 and 93 leads to an irresistible conclusion that a meeting of the Board can be held only at a public place. These

provisions negative the idea of the meeting being held at the residence of an individual.

94. The Minute Book And Resolutions :-

(1) The names of the members present, and the proceedings held and resolutions passed, at a meeting of a 4 [Municipality] shall be entered in a book to be called the minute book. 5 [(1-A) The Executive Officer or where there is no Executive Officer, the Secretary of the 6 [Municipality] shall maintain a register of attendance of members and every member shall sign it before taking his seat at any meeting of the 7 [Municipality].] 8 [(2) The minutes shall be read out at the meeting or the next ensuing meeting and, unless objected to by a majority of such of the members, if any, present at the reading as were also present at the proceedings recorded in such minutes, shall be certified as passed by the signature of the President of the meeting at which they are read.] 9 [(3) Every resolution passed by a 10 [Municipality] at a meeting, shall, as soon thereafter as may be, 11 [be published in Hindi in any paper approved by the State Government for purpose of publication of public notices, published in the district, or 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Municipal Board, Jaspur v. District Magistrate, Nainital, 1991 (Suppl) RD 53. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 7 of 1953. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 26 of 1964. if there is no such paper, in the district, in the division, in which the municipality concerned is situate and where there is no such paper, be posted upon the notice boards of the municipal office and Collectorate Office for three consecutive days].]

(4) Copies of every resolution passed by a 1 [Municipality] at a meeting shall, within ten days from the date of the meeting, be forwarded to the 2 [Prescribed Authority] and the District Magistrate.

(5) When, subsequent to action being taken in respect of any resolution under sub-section (3) or (4), but before the minutes recording the resolution are signed as required by sub-section (2), any alteration is made in the wording of such minutes, the alteration shall be notified by publication or communicated to the 3 [Prescribed Authority] and the District Magistrate, as the case may

be.

(6) A resolution of a 4 [Municipality] shall not be modified or cancelled within six months after the passing thereof, -

(a) unless previous notice has been given setting forth fully the resolution which it is proposed to modify or cancel and the motion or proposition for the modification or cancellation of such resolution; and

(b) except by a resolution supported by not less than, one half of the total number of members of the 5 [Municipality] for the time being. Conduct of correspondence, accounts, budgets, etc.

95. Conduct Of Correspondence, Accounts, Budgets, Etc :-

The following matters shall be regulated and governed by rules made by the State Government, namely, -

(a) the intermediate office or offices, if any, through which correspondence between 6 [Municipality] and the State Government or officers of the State Government and representations by the 7 [Municipality] addressed to the State Government shall pass;

(b) the preparations of plans and estimates for works which are to be partly or wholly constructed at the expense of the 8 [Municipality]; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994.

(c) the authority by whom and the conditions subject to which such plans and estimates may be sanctioned;

(d) the agency by which such plans and estimates shall be prepared and by which works shall be carried out;

(e) the accounts to be kept by 1 [Municipalities], the manner in which accounts shall be audited and published and the power of auditors in respect of disallowance and surcharge;

(f) the date before which a meeting shall be held for the sanction of the budget;

(g) the method and forms to be adopted in the preparation of budget;

(h) the conditions subject to which a 2 [Municipality] in respect of which an order has been issued under Section 102 be entitled to vary or alter its budget; 3 [* * *]

(i) the return, statements and reports to be submitted by 4 [Municipalities]; 5 [and]

(j) regular periodical inspection of office and works of the 6 [Municipality]. Contracts

96. Sanctioning Of Contracts :-

(1) The sanction of the 7 [Municipality] by resolution is required in the case of every contract, -

(a) for which budget provision does not exist; or 8 [(b) involving a value or amount, exceeding 9 [Fifty thousand rupees] in the case of contract by the Municipal Council and 10 [Fifteen thousand rupees] in the case of a contract by the Nagar Panchayat] . 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by Sec.5(a) of U.P. Act No. 22 of 2001, for "ten thousand rupees" (w.e.f. 6.10.2001). 10 Subs. by Sec.5(b) of U.P. Act No. 22 of 2001, for "three thousand rupees" (w.e.f. 6.10.2001). 1 [Provided that during the period intervening two meeting of the Municipal Council, the President may sanction contracts involving a value or amount not exceeding 2 [One lakh rupees].]

(2) Any contract, other than a contract of either description specified in subsection (1), may be sanctioned by resolution of the 3 [Municipality], or by a committee of the 4 [Municipality] (not being an advisory committee) empowered in this behalf by regulation, or by any one or more than one officer or servant of the 5 [Municipality] so empowered : 5 [Provided that the contracts sanctioned by a committee, officer or servant shall be placed before the 6 [Municipality] for information at the next ensuing meeting].

(3) 7 [Where] the plans and estimates of a project have, in accordance with any rule made in this behalf, been sanctioned by the 8 [Municipality], and the execution of the work has been entrusted by the 9 [Municipality] to an engineer in its service or employment, the 10 [Municipality] may, with the previous sanction of the 11 [Prescribed Authority] empower by resolution such engineer to sanction all contracts or any one or more contracts of any particular description 12 [other than a contract of either description specified in sub-section (1)] required for the execution of the project, and may in like manner impose any condition or restriction on the exercise of the power so conferred. 13 [UTTARAKHAND] AMENDMENT 14 [In Section 96 of the principal

Act, in sub-section (1), in clause (b) - (a) for the words "ten thousand rupees" the words "fifty thousand rupees" shall be substituted. 1 Ins. by U.P. Act No. 12 of 1994. 2 Subs. by Sec.5(c) of U.P. Act No. 22 of 2001, for "twenty thousand rupees" (w.e.f. 6.10.2001). 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 26 of 1964. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 7 of 1949. 12 Ins. by U.P. Act No. 26 of 1964. 13 The word "Uttaranchal" subs. by Act No. 52 of 2006. 14 vide Uttaranchal Act No. 11 of 2005.

(b) for the words "three thousand rupees" the words "fifteen thousand rupees" shall be substituted.

(c) in the proviso for the words "twenty thousand rupees" the words "one lakh rupees" shall be substituted.] NOTES Awarding of contract - It was held in *JesparI. Slong v. State of Meghalaya*. 1 It goes without saying that the Government while entering into contracts is expected not to act like a private individual but should act in conformity with health standards and norms. Such actions should not be arbitrary, irrational or irrelevant. The awarding of contracts by inviting tenders is considered to be one of the fair methods. If there are any reservations or restrictions then they should not be arbitrary and must be justifiable on the basis of some policy or valid principles which by themselves should be reasonable and not discriminatory. 2 Contract of sale - Sale has been defined in Section 54 of the Transfer of Property Act, 1982. It is a transfer of ownership in exchange for a price paid or promised or part paid and part promised. A contract for sale of the immovable property is a contract that a sale of such property shall take place on the terms settled between the parties. The parties to the contract of sale are bound by an instrument drawn for the said purpose. Their rights and liabilities flow from the terms of the contract incorporated in the deed. If, therefore, there was no embargo in the terms of the contract arrived at between the parties while transferring or selling the land to the petitioner society that it shall not alienate the same for a specified period, the petitioner society was at liberty and had every right to transfer it as per its choice. 3 Freedom to contract - The freedom to contract available to a citizen cannot be curtailed or curbed relying on the fundamental rights enshrined in Part III of the Constitution against State action. A right to enforce a fundamental right against State action cannot be extended to

challenge a right to enter into a contract giving up an absolute right in oneself in the interests of an association to be formed or in the interests of the members in general of that association.

97. Execution Of Contract :-

(1) Every contract made by or on behalf of a 5 [Municipality] whereof the value or the amount exceeding Rs. 250 shall be in writing : 1 (2004) 11 SCC 485 2 Mani Enterprises v. Airports Authority of India, AIR 2005Mad 449. 3 Scheduled Castes Co-op. Society v. State of Punjab and another, AIR 2005 P&H 100. 4 Zoroastrian Co-operative Housing Society Ltd. v. District Registrar, Co- operative Societies (Urban) and others, (2005) 5 SCC 632. 5 Subs. by U.P. Act No. 12 of 1994.1 [Provided that unless the contract has been duly executed in writing, no work including collection of materials in connection with the said contract shall be commenced or undertaken].

(2) Every such contract shall be signed, -

(a) by the President or a Vice-President and by the executive officer or a secretary; or

(b) by any person or persons empowered under sub-section (2) or (3) of the previous section to sanction the contract if further and in like manner empowered in this behalf by the 2 [Municipality].

(3) If a contract to which the foregoing provisions of this section apply is executed otherwise than in conformity therewith it shall not be binding on the 3 [Municipality]. NOTE Execution of contract by Commissioner - In Nand Kishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan and Dombivali and others 4 , the Supreme Court while construing the provision of clause (c) of Section 73 of the Mumbai Provincial Municipal Corporation Act, 1949, held that although the Commissioner was entitled to execute the contract on behalf of the corporation but a statutory embargo was placed upon him by the Act which required that before executing a contract, the Commissioner was required to seek previous approval of the standing committee.

97A. Special Provision Regarding Certain Projects :-

Notwithstanding anything contained in this Act, every contract or estimate in respect of an urban development project sponsored by the Central Government or receiving aid from the World Bank or any other foreign organization, be made or sanctioned in accordance with the scheme approved by the State Government : Provided that the meeting of the Municipality for sanction of funds for the urban development project shall be convened and decision be taken within one month from the date of approval of the project by the State Government. Provided further

that if the meeting of the municipality is not convened or decision is not taken within the time specified in the first proviso, the municipality shall be deemed to have sanctioned the funds and if the sanction is refused or is accorded with modifications, the matter shall be referred to the State Government and 1 Ins. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 (2005) 1 UPLBEC 144. 5 Vivek Srivastava v. Union of India and others, (2005) 2 SAC 237. 6 Ins. by U.P. Act No. 12 of 1994. the decision of the State Government shall be final and binding on the municipality and the municipality shall be deemed to have sanctioned the funds accordingly. The Executive Officer may thereupon execute the project, spend funds and ensure completion of the project within the stipulated time : Provided also that the municipality shall undertake regular monitoring of the projects and shall send its report to the State Government.]

98. Registration Of Instruments :-

When 1 [* * *] Registration Act, 1908, or any rule made thereunder, requires or permits any act to be done with reference to a document by a person executing or claiming under the same, and the document has been executed on behalf of a 2 [Municipality] or is a document under which a 3 [Municipality] claims, the Act may, notwithstanding anything to the contrary contained in the aforesaid enactment, or in any rule thereunder, be done by the President, the Executive Officer or a Secretary of the 4 [Municipality] or by any other officer of the 5 [Municipality] empowered by regulation in this behalf. The budget

99. The Budget :-

(1) Every 6 [Municipality] shall have prepared, and laid before it, at a meeting to be held in every year before such date as is fixed by rule in this behalf, a complete account of the actual and expected receipts and expenditure for the year ending on the thirty-first day March next following such date together with a budget estimate of the income and expenditure of the 7 [Municipality] for the year commencing on the first day of April next following.

(2) Subject to the provisions of Section 102 the 8 [Municipality] shall at such meeting decide upon the appropriations and the ways and means contained in the budget estimate and by special resolution, sanction a budget, which shall be submitted to the State Government or to such officers as the State Government by order directs in this behalf.

(3) Subject to the like provisions of the 9 [Municipality] may vary or alter, from time to time, as circumstances may render desirable, by special resolution, the budget sanctioned under sub-section (2).

100. The Revised Budget :-

As soon as may be after the first day of October a revised budget

for the year shall be framed and such revised budget, shall, so far as may be, be subject to all the provisions applicable to a budget made under Section 99. 1 The word "Indian" omitted by Sec. 2 of Act No. 45 of 1969. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994.

101. Minimum Closing Balance Shown In Budget :-

In framing a budget a 1 [Municipality] shall provide for the maintenance of such minimum closing balance (if any) as the State Government may by order prescribe.

102. Budget Of Indebted :-

2 [Municipality] - Where in the opinion of the 3 [State Government] the condition of indebtedness of any 4 [Municipality] is such as to make the control of the State Government over its budget desirable, the 5 [State Government] may, by order declaring that such is the case, direct that the budget of such 6 [Municipality] shall be subject to the sanction of the 7 [State Government] or the 8 [Prescribed Authority] and that the power to vary or alter the budget under subsection (3) of Section 99 shall be subject to conditions to be prescribed by rule.

103. Prohibition Of Expenditure In Excess Of Budget :-

(1) Where a budget has been passed the 9 [Municipality] shall not incur any expenditure under any of the heads of the budget, other than a head providing for the refund of taxes in excess of the amount passed under that head, without making provision for such excess by the variation or alteration of the budget.

(2) Where any expenditure under any head providing for the refund of taxes is incurred in excess of the amount passed under that head, provisions shall be made without delay for such expenditure by the variation or the alteration of the budget.
Committees and joint committees

104. Appointment Of Committees :-

(1) A 10 [Municipality] may 11 [and where so required by the 12 [State Government] shall], -

(a) by regulation establish such committees as it thinks fit 13 [or as the 14 [State Government] may direct or the purpose of exercising

such powers, performing such duties or discharging such functions as may be delegated to a committee under Section 112; and 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by ALO 1950. 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Added by U.P. Act No. 7 of 1949. 12 Subs. by ALO 1950. 13 Ins. by U.P. Act No. 7 of 1949. 14 Subs. by ALO 1950.

(b) by single transferable vote elect such of its members as it thinks fit for a period not exceeding one year to any committee so established, in accordance with the method prescribed in the Regulations made by the Chairman of the Legislative Council of Uttar Pradesh in pursuance of Order 82 and 87 of the Standing Orders, for the conduct of business and procedure to be followed in the Legislative Council and dated 15 th March, 1921, the words "the President" and "the Council" and "the Council" occurring in the said Regulations being for purposes of this clause read as "President of the Municipality" and " 1 [Municipality]" respectively; provided that the State Government may, from the time to time, as it thinks fit amend the said Regulations for the purposes of this clause; and

(c) by resolution remove any member elected under clause (b). 2 [(1-A) In the committee exclusively for the education of girls established under the preceding sub-section not less than one-half of its members shall be women members of the 3 [Municipality] together with such other women who, being residents of the municipality but not members of the 4 [Municipality], are, by reason of their interest in the education of girls, appointed under Section 105. The Chairman of any such committee shall be a person elected from amongst the women members of such committee : Provided that a 5 [Municipality] may, from time to time, by resolution establish, and appoint the members of one, or more than one, advisory committee for the purpose of enquiring into, and reporting on any matter in respect of which a decision of the 6 [Municipality] is required by or under this Act.

105. Appointment Of Persons Other Than Members :-

(1) Notwithstanding anything contained in this Act, it shall be lawful for a 7 [Municipality] by a resolution supported by not less than one-half of the whole number of members for the time being

to appoint as members of a committee any persons of either sex who are not members of the 8 [Municipality], but who in the opinion of the 9 [Municipality], possess special qualifications for serving on such committee : 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. Provided that the number of persons so appointed on a committee shall not exceed one-third of the total number of the members of committee.

(2) All the provisions of this Act, and of any rules relating to the duties, powers, liabilities, disqualifications and disabilities of members shall, save as regards a disqualification on the grounds of sex, be applicable, so far as may be, to such persons.

106. Vacancies In Committees :-

A vacancy occurring in any committee may at any time be filled up by the appointment by the 1 [Municipality], in the manner prescribed by Section 104, or Section 105, of another member or persons.

107. President Of A Committee :-

(1) The 2 [Municipality] may by resolution appoint a President for any committee.

(2) In default of a President being appointed by the 3 [Municipality], a committee shall appoint its own President from among its members.

108. Procedure Of Committees :-

(1) The provisions of sub-section (1) and (2) of Section 92, of Section 93, and of sub-section (1), (2), (4), (5) and (6) of Section 94 shall apply to the proceedings of committees of a 4 [Municipality], as if the words "a committee" were substituted for the words "a 5 [Municipality]" or "the 6 [Municipality]" whenever they occur therein.

(2) Committees may meet and adjourn as they think proper, but the President of the committee may, whenever he thinks fit, and shall, upon the written request of the 7 [President] of the 8 [Municipality] or of not less than two members of the committee, call a meeting of the committee.

(3) Subject to the provision contained in sub-section (4), no business shall be transacted at any meeting unless more than one-fourth of the members of the committee are present thereat.

(4) Where it is necessary to postpone any business at a meeting of a committee for want of the prescribed quorum, the procedure specified in sub-section (3) of Section 88 shall be followed.

109. Subordination Of Committee To Municipality :-

(1) The 10 [Municipality] may at any time call for any extract from any proceedings of any 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. committee and for any return, statement, account or report concerning or connected with any matter with which the committee has been authorized, or directed to deal.

(2) Every committee shall, with all convenient speed, comply with any requisition of the 1 [Municipality] made under sub-section (1). 2 [(3) The 3 [Municipality] may, for reasons to be recorded, vary or override any decision of the committee.]

110. Joint Committee :-

(1) A 4 [Municipality] may, and if so required by the 5 [State Government] shall, combine with one, or more than one, other assenting local authority to appoint by means of a written instrument subscribed by the local authorities concerned, a joint committee for the purpose of transacting any business in which they are jointly interested.

(2) Such instrument shall prescribe the number of members who shall be chosen by each local authority to represent it upon the joint committee, the person who shall be 6 [President] thereof, the powers being powers exercisable by one or more of the concurring local authorities which may be exercised by the joint committee, and the method of conducting the proceedings and correspondence thereof.

(3) Such instrument may, from time to time, be varied or rescinded by a further instrument subscribed by all the local authorities concerned, and in the event of the rescission of any instrument under this sub-section, all proceedings thereunder shall deemed

inoperative with effect from a date to the specified in such further instrument.

(4) Any difference of opinion arising in the course of any proceeding under the foregoing provisions of this section, between two or more local authorities shall be decided by reference to the 7 [State Government] under Section 325.

110A. Formation Of State 8 Municipalities Union And Its Functions :-

(1) The 9 [Municipalities] in Uttar Pradesh may combine to form an association to be called the State 10 [Municipalities] Union, provided that no such association shall be formed unless more than half the number of 11 [Municipalities] in the State severally pass a resolution signifying their intention to become members. 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs by ALO 1950. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. (2) The functions of the union formed under sub-section (1) of this section shall be to examine problems of common interest to the 1 [Municipalities], advise the 2 [Municipalities] on the improvement of municipal administration and to perform such other function as the 3 [State Government] may, from time to time, prescribe.

(3) The following matters shall be regulated and governed by rules made by the 4 [State Government], viz., -

(a) the constitution and aims and objects of the union;

(b) the amount and the method of contribution of 5 [Municipalities] to the union;

(c) the management and control of finances of the union;

(d) 6 [* * *]

(e) generally such other matter as may be necessary for the purpose of this section. Exercise and delegation of powers by 7 [Municipality]

111. Powers Of Which The Exercise Is Reserved To A Municipality Acting By Resolution :-

(1) The powers, duties and functions specified in the second column of Schedule 1, with the exception of those against which an entry is shown in the third column of that schedule, may be exercised, and shall be performed or discharged by a 9 [Municipality] or by resolution passed at a meeting of the 10 [Municipality] and not otherwise.

(2) Nothing in sub-section (1) shall be construed to prevent a resolution of a 11 [Municipality] being carried into execution by any agency duly authorized in this behalf by or under the Act or by a servant of the 12 [Municipality] acting within the scope of is employment.

112. Delegation Of Powers By Municipality :-

(1) With the exception of a power, duty or function, - 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Omitted by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994.(a) specified in the second column, and against which no entry is shown in the third column of Schedule I;

(b) reserved or assigned to a 1 [President] by clauses (a), (b) and (c) of Section 50 or by Section 51; and 2 [(c) where there is an Executive Officer or a Medical Officer of Health, reserved to the Executive Officer by Section 60 or to the Medical Officer of Health by Section 60-A;] a 3 [Municipality] may delegate by resolution all or any of the powers, duties or functions conferred or imposed on, or assigned to, a 4 [Municipality] under this Act.

(2) Except as provided in sub-section (3), a 5 [Municipality] shall not itself exercise, perform or discharge or interfere in the exercise, performance or discharge of any power, duty or function which it has delegated under sub-section (1).

(3) The delegation by the 6 [Municipality] under sub-section (1) of any power, duty or function may be made subject to the condition that all or any orders made in pursuance of such delegation shall be subject to the right of appeal to, or revision by, the 7 [Municipality] within a specified period.

(4) Nothing in the foregoing provisions of this section shall be deemed to prevent a resolution of a committee of a 8 [Municipality] being carried into execution by any agency duly authorized in this behalf by or under this Act, or to preclude any servant of the 9 [Municipality] from acting within the scope of employment. Validity of acts and proceedings

113. Presumptions And Savings :-

(1) No vacancy in a 10 [Municipality] or in a committee of a 11 [Municipality] shall vitiate any act or proceeding of a 12 [Municipality] or of such committee.

(2) No disqualification, or defect in the 13 [election or nomination], of a person acting a 14 [member of a municipality or in the election, nomination or 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 5 of 1932. 3 Subs. by U.P. Act No. 12 of 1994. 4

Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994. 14 Subs. by U.P. Act No. 12 of 1994. appointment of a person acting as a member] or a committee appointed under this Act or as the President or the Chairman, as the case may be of a meeting of a 1 [Municipality] or of such committee, shall be deemed to vitiate any act or proceedings of the 2 [Municipality] or of the committee, if the majority of the persons present at the time of the act being done, or proceeding being taken were qualified and duly elected 3 [or nominated] members of the 4 [Municipality] or committee.

(3) Until the contrary is proved, any document or minutes which purport to be the record of the proceedings of a 5 [Municipality] or committee shall, if substantially made and signed in the manner prescribed for the making and signing of the record of such proceedings, be deemed to be a correct record of the proceedings, of a duly convened meeting held by a duly constituted 6 [Municipality] or committee whereof all the members were duly qualified. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 2 of 1919. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994.

CHAPTER 4

MUNICIPAL FUND AND PROPERTY

114. Municipal Fund :-

(1) There shall be established, for each municipality, a fund called municipal fund and to the credit whereof shall be placed all sums received including the grants-in-aid from the Consolidated Fund of the State, and all loans raised, by or on behalf of the municipality.]

(2) Nothing in this section shall effect any obligations of a 8 [Municipality] arising from a trust legally imposed upon or accepted by it.

114A. Powers Of The Municipality To Borrow Money :-

For performance of its duties and functions, whether mandatory or discretionary, a 11 [Municipality] may with the previous sanction of the State Government, and subject to the rules prescribed in this behalf, raise loans in the open market or from any financial institution by issue of debentures or against any other security.]

115. Custody And Investment Of Municipal Fund :-

(1) The municipal fund shall be kept in the Government treasury or sub-treasury or in the State Bank of India or with the previous sanction of the State Government, in the Uttar Pradesh Cooperative Bank or in a Scheduled Bank.]

(2) In places where there is no such treasury or sub-treasury or bank the municipal fund may be kept with a banker, or person acting as a banker who has given such security for the safe custody and re-payment on demand of the fund so kept as the 1 [State Government] may in each case think sufficient :

(3) Provided that nothing in the foregoing provisions of this section shall be deemed to preclude a 2 [Municipality] from, with the previous sanction of the State Government, investing in any of the securities described in Section 20 of the Indian Trust Act, 1882, or placing on fixed deposit with a Presidency Bank and portion of its municipal fund which is not required for immediate expenditure.

116. Property Vested In Municipality :-

Subject to any special reservation made by the 4 [State Government], all property of the nature hereinafter in this section specified and situated within the 5 [municipal area] shall vest in and belong to the 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Ins. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by ALO 1950. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994.118 6 [Municipality], and shall, with all other property which may become vested in the 7 [Municipality], be under its direction, management and control, that is to say, -

(a) all public town walls, gates, markets, slaughter-houses, manure and nightsoil depots and public buildings of every description which have been constructed or are maintained out of the municipal fund;

(b) all public streams, lakes, springs, tanks, wells and works for the supply, storages and distribution of water for public purposes and all bridges, buildings, engines, materials and things connected therewith or appertaining thereto, and also any adjacent land not being private property appertaining to any public tank or well;

(c) all public sewers, drains, culverts and water-courses, and all works, materials and things appertaining thereto;

(d) all dust, dung, 8 [nightsoil], ashes, refuse, animal matter or filth or rubbish of any kind, or dead bodies of animals collected by the 9 [Municipality] from the streets, houses, privies, sewers,

cesspools or elsewhere or deposited in places appointed by the 1 [Municipality] under Section 273;

(e) all public lamps, lamp posts and apparatus connected therewith or appertaining thereto;

(f) all land or other property transferred to the 2 [Municipality] by the Government or by gift, purchase or otherwise for local public purposes; and

(g) all public streets and the pavements, stones and other materials thereof, and also all trees, erections, materials, implements and things existing on or appertaining to such streets.

NOTE Public property-Fees - It would, thus, be seen that the Board has been empowered statutorily to prescribe the fee for use of the public property vesting in or belonging to the municipality. Even under the recent amendment brought by the 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Added by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.119 constitution (73 rd Amendment) Act, 1992 which came into force w.e.f. 20.4.1993; it imposes the statutory responsibilities on the municipalities. 3 Section 116(d) of the Act clearly lays down that the refused animal matter or filth or rubbish of any kind or dead bodies of animals collected by the Board from the streets, houses, privies sewers, cess pools or elsewhere shall vest in and belong to the Board.

117. Compulsory Acquisition Of Land :-

Where a 5 [Municipality], for the purpose of exercising any power or performing any duty conferred or imposed upon it by or under this or any other enactment, desires the State Government to acquire on its behalf, permanently or temporarily, any land or any right in respect of land under the provisions of the Land Acquisition Act, 1894, or of other existing law, the State Government may, at the request of 6 [Municipality], 7 [in the manner prescribed] acquire such land or such right under the aforesaid provisions; and, payment by the 8 [Municipality] to the State Government of the compensation awarded thereunder and of the charges incurred by the State Government in connection, with the proceedings, the land or right, as the case may be, shall vest in the 9 [Municipality].

118. Power Of Municipality To Manage And Control Property Entrusted To Its Management :-

Subject to the provisions of the next section and to any condition imposed by the owner of the property a 2 [Municipality] may

manage and control any property entrusted to its management and control.

119. Public Institutions :-

(1) The management, control and administration of every public institution maintained exclusively out of the municipal fund shall vest in the 3 [Municipality].

(2) Any other public institution may be vested in, placed under the management control and administration of the 4 [Municipality], provided that the extent of the independent authority of the 5 [Municipality] in respect thereof may be prescribed by rule.

(3) All property, endowments and funds belonging to any public institution vesting in, or placed under the management, control and administration of, a 3 Municipal Board, Hapur v. Jassa Singh,, (1996) 10 SCC 377 at p. 379. 4 Laddan and others v. Nagar Palika, Moradabad, 1989 RD 335. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Ins. by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.120 6 [Municipality] shall be held by the 7 [Municipality] in trust for the purpose, to which such property, endowments and funds were lawfully applicable at the time when the institution become so vested or was so placed.

(4) Provided that nothing in the foregoing provisions of this section shall be held to prevent the vesting of any trust property in the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890.

120. Application Of Municipal Fund And Property :-

(1) The municipal fund and all property vested in a 8 [Municipality] shall be applied for the purposes, express or implied, for which, by or under this or any other enactment, powers are conferred or duties or obligations are imposed upon the 9 [Municipality].

(2) Provided that the 10 [Municipality] shall not incur any expenditure for acquiring or renting land beyond the limits of the 11 [municipal area] or for constructing any work beyond such limits except, -

(a) with the sanction of the 12 [State Government]; and

(b) on such terms and conditions as the 13 [State Government]

imposes.

(3) Provided also that priority shall be given in the order set forth below, to the following liabilities and obligations of a 1 [Municipality], - 2 [(a) the payment of salaries and allowances of Safai Mazdoors;

(a-1) the liabilities and obligations arising from a trust legally imposed upon, or accepted by the 3 [Municipality];]

(b) the re-payment of, and the payment of interest on, any loan incurred under the provision of the Local Authorities Loans Act, 1914;

(c) 4 [except the payments under clause

(a), the payment of establishment charges], including such contributions as are referred to in Section 78, and the salary, allowances and 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by ALO 1950. 13 Subs. by ALO 1950. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 15 of 1983. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 15 of 1983. 121 pension of an executive officer appointed by the 5 [State Government];

(d) any sum ordered to be paid from the municipal fund under subsection (3) of Section 35, sub-section (2) of Section 36, Section 126, sub-section (3) of Section 163 or sub-section (3) of Section 320. 6 [Explanation - For the purpose of this sub-section, a person shall be deemed to be a Safai Mazdoor if he is employed by the 7 [Municipality] for the purposes of sweeping and cleaning of municipal roads, lanes, pathways, drains, sewers, latrines and urinals, carrying of dead animals and refuse and for other jobs of the like nature.]

120A. Restriction On Expenditure From Municipal Fund Over Certain Litigation :-

No expenditure from the municipal fund shall be incurred without the prior sanction in writing of the director for the purposes of defraying the costs of any proceedings instituted or commenced in any Court of law by or on behalf of a 9 [Municipality] or its President in respect of any order made or purporting to have been made by the State Government under Section 30, Section 34, Section 40 or Section 48.]

121. Disposal Of Municipal Fund When Area Ceases To Be A Transitional Area Or A Smaller Urban Area, As The Case May Be :-

(1) When, by reason of a notification under Section 3, any local

area ceases to be 11 [transitional area of a smaller urban area, as the case may be], and is immediately placed under the control of some other local authority, the municipal fund and property vesting in the 1 [Municipality] shall vest in such other local authority and the liabilities of the 2 [Municipality] shall be transferred to such other local authority.

(2) When, in like manner, any local area ceases to be a 3 [transitional area or a smaller urban area, as the case may be], and is not immediately placed under the control of another local authority, and balance of the municipal fund and other property vesting the 4 [Municipality] shall vest in the 5 [State Government] and the liabilities of the 6 [Municipality] shall be transferred to 7 [the State Government]. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 15 of 1983. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 41 of 1976. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs by ALO 1950. 6 Subs. by U.P. Act No. 12 of 1994.

122. Disposal Of Municipal Fund When Area Ceases To Be Included In A Transitional Area Or A Smaller Urban Area, As The Case May Be :-

(1) When, by reason of a notification under Section 3, any local area ceases to be included in a 9 [transitional area or a smaller urban area, as the case may be], and is immediately placed under the control of some other local authority such portion of the municipal fund and other property vesting in the 10 [Municipality] shall vest in that other local authority, and such portion of the liabilities of the 11 [Municipality] shall be transferred to that other local authority, as the 12 [State Government] after consulting the 13 [Municipality] and that other local authority, declares by notification.

(2) When in like manner, any local area ceases to be include in a 14 [transitional area or a smaller urban area, as the case may be] and is not immediately placed under the control of some other local authority, such portion of the municipal fund and other property vesting in the 15 [Municipality] shall vest in the 16 [State Government], and such portion of the liabilities of the 17 [Municipality] shall be transferred to the 18 [State Government], as

the State Government after consulting the 19 [Municipality] and considering any representation made by the inhabitants of the excluded area, declares by notification.

(3) Provided that where an excluded area is placed under the control of local a local authority not existing at a date previous to the exclusion, the 1 [State Government], before making a declaration under sub-section (1), shall take into consideration any representation made by the inhabitants of the excluded area.

(4) Provided also that the foregoing provisions of this section shall not apply in any case where the circumstances, in the opinion of the 2 [State Government] render undesirable the transfer of any portion of the municipal fund or liabilities.

123. Application Of Funds And Property Accruing To Government Under Section 121 Or 122 :-

Any municipal fund or portion of municipal fund or other property of a 3 [Municipality] accruing under the provisions of Section 121 or 122 to 7 Subs. by ALO 1950. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by ALO 1950. 13 Subs. by U.P. Act No. 12 of 1994. 14 Subs. by U.P. Act No. 12 of 1994. 15 Subs. by U.P. Act No. 12 of 1994. 16 Subs. by ALO 1950. 17 Subs. by U.P. Act No. 12 of 1994. 18 Subs. by ALO 1950. 19 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by ALO 1950. 2 Subs. by ALO 1950. 3 Subs. by U.P. Act No. 12 of 1994. 123 the 4 [State Government], shall be applied in the first place to satisfy any liability of the 5 [Municipality] transferred under such provisions to the 6 [State Government] and secondly for the benefit of the inhabitants of the local area.

124. Power Of Municipality To Transfer Property :-

(1) Subject to any restriction imposed by or under this Act, a 8 [Municipality] may transfer by sale, mortgage, lease, gift, exchange or otherwise any property vested in the 9 [Municipality] not being property held by it on any trust the terms of which are inconsistent with the right to so transfer.

(2) Notwithstanding anything contained in sub-section (1), the 10 [Municipality] may with the sanction of the 11 [State Government] transfer to Government, any property vested in the 12 [Municipality] but not so as to affect any trust or public rights to which the property is subject.

(3) Provided that every transfer under sub-section (1), other than a

lease for a term not exceeding one year, shall be made by instrument in writing sealed with the common seal of the municipality and otherwise complying with all conditions in respect of contracts imposed by or under this Act.

125. Payment Of Compensation From Municipal Fund :-

The [Municipality] may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in the 2 [Municipality], its officers or servants under this or any other enactment or vested in the 3 [State Government], the 4 [Prescribed Authority] or the District Magistrate under Section 34 and shall make such compensation where the person sustaining the damages was not himself in default in the manner in respect of which the power was exercised.

126. Payment By Municipality For Special Police Protection At Fairs, Etc :-

(1) When special police protection is, in the opinion of the State Government, requisite on the occasion of a fair, agricultural show or industrial exhibition managed by a 6 [Municipality], the 7 [State Government] may provide such protection, and the 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by ALO 1950. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by ALO 1950. 12 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by ALO 1950. 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 124 8 [Municipality] shall pay the whole charges thereof or such portion of such charge as the 9 [State Government] considers equitably payable by it.

(2) If the sum charged is not paid, the District Magistrate may make an order directing the person having the custody of the municipal fund to pay the expenses from such fund.

127. Other Matters Relating To Municipal Fund And Property :-

The following matter shall be regulated and governed by rules made by the 10 [State Government] under Section 296, namely, -
(a) the authority on which money may be paid from the municipal fund;

(b) the conditions on which property be acquired by the 11 [Municipality] or on which property vested in the 12 [Municipality] may be transferred by sale, mortgage, lease, exchange or otherwise; and

(c) any other matter relating to the municipal fund or municipal property in respect of which the Act makes no provision or insufficient provisions and provision is necessary. 7 Subs. by ALO 1950. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by ALO 1950. 10 Subs. by ALO 1950. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994.

CHAPTER 5

MUNICIPAL TAXATION

128. Taxes Which May Be Imposed :-

(1) Subject to any general rules or special order of the 1 [State Government] in this behalf, the taxes which a 2 [Municipality] may impose in the whole or part of a municipality are, -

(i) a tax on the annual value of building or lands or of both;

(ii) a tax on trades and callings carried on within the municipal limits and deriving special advantages from, or imposing special burdens on municipal services;

(iii) a tax on trades, callings and vocations including all employments remunerated by salary or fees; 3 [(iii-a) a theatre tax which means a tax on amusements or entertainments;]

(iv) a tax on vehicles and other conveyances plying for hire or kept within the municipality or on boats moored therein;

(v) a tax on dogs kept within the municipality;

(vi) a tax on animals used for riding, driving, draught or burden, when kept within the municipality;

(vii) 1 [* * *]

(viii) 2 [* * *]

(ix) a tax on inhabitants assessed according to their circumstances and property;

(x) a water-tax on the annual value of buildings or lands or of both; 3 [(x-a) a drainage tax on the annual value of buildings leviable on such buildings as are situated within a distance, to be fixed by rule in this behalf for each municipality from the nearest sewer line;]

(xi) a scavenging tax; 1 Subs. by ALO 1950. 2 Subs. by U.P. Act No. 12 of 1994. 3 Added by U.P. Act No. 26 of 1964. 1 Omitted by U.P. Act No. 9 of 1991. 2 Omitted by U.P. Act No. 9 of 1991. 3

Added by U.P. Act No. 26 of 1964.129 4 [(xii) a conservancy tax for the collection, removal and disposal of excrementious and polluted matter from privies, urinals, cesspools;]

(xiii) 5 [* * *]

(xiii-A) 6 [* * *]

7 (xiii-B)a tax on deeds of transfer of immovable property situated within the limits of the municipality;]

(xiv) 8 [* * *]

(2) Provided that taxes under clauses (iii) and (ix) of sub-section (1) shall not be levied at the same time 9 [* * *] 10 [nor shall the taxes under clauses (x-a) and (xii) of sub-section (1) be levied at the same time;] 11 [Provided further that no tax under clause (xiii-B) of sub-section (1) shall be levied on deeds of transfer of immovable property situated within such area of the municipality as forms part of the local area of any Improvement Trust created under Section 3 of the U.P. Town Improvement Act, 1919 (U.P. Act No. VIII of 1919)] : Provided also that no tax under clause (iv) of sub-section (1) shall be levied in respect of any motor vehicle.

(3) Nothing in this section shall authorize the imposition of any tax which the 1 [State Legislature] has no power to impose in the 2 [State] under 3 [the Constitution] : Provided that a 4 [Municipality] which immediately before the commencement of 5 [the Constitution] was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament. NOTE Tax and Fee - Conceptually fee and tax stand on different footings; whereas the element of tax is based on the principle of compulsory taxation, the concept of fee 4 Subs. by U.P. Act No. 26 of 1964. 5 Omitted by U.P. Act No. 9 of 1991. 6 Omitted by ALO 1937. 7 Added. by U.P. Act No. 26 of 1964. 8 Omitted by U.P. Act No. 9 of 1991. 9 Omitted by U.P. Act No. 9 of 1991. 10 Added by U.P. Act No. 26 of 1964. 11 Added by U.P. Act No. 26 of 1964. 1 Subs. by ALO 1937. 2 Subs. by ALO 1937. 3 Subs. by ALO 1937. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by ALO 1937. 130 relates to the principle of quid pro quo. The validity of tax cannot, therefore, be upheld on the ground that the same would be a fee. 6 Tax on land and buildings-Nature of - The tax charged on lands and buildings is based on the estimated rent which the property would fetch. Such a value may bear very little relation to the actual income of the property. It is imposed without any relation to the capital value except in so far as such value can be ascertained by reference to the rateable value. It did not make any difference if the arbitrary basis which was adopted

for the purpose of the rate might as well be applied for ascertaining the capital value as for ascertaining income. The fact that some concession is allowed to the small owner, a concession which may be based as much on political as on economic considerations and that an allowance may be made where the property is shown to produce no income, a fact which may be taken to show that the estimated value was found to be erroneous, cannot alter the nature of the tax.

7 Levy of tax - Under Section 128 of the United Provinces Municipalities Act, 1916, the municipality can impose a tax in the whole or any part of the municipality on the annual value of buildings or land or of both and a water tax on the annual value of buildings or land or of both. Every such tax on the annual value of buildings or land or both is leviable on the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the Crown or from the Board, or on a building lease from any person. In any other case the tax is leviable from the lessor, if the property is let (vide Section 149). Section 177 enacts that all sums due on account of a tax imposed on the annual value of the building or lands or both shall, subject to the prior payment of the land revenue, if any, due to His Majesty thereupon, be a first charge upon such buildings or lands.

1 Purpose of taxation - A fair reading, of the provisions makes it clear that the amounts collected by the Municipal board by way of taxes are mainly intended to enable the Board to discharge its duties in the municipal area or a part of the municipal area, as the case may be.

2 Application for refund of toll - The application for refund of the toll must be made within fifteen days from the date of the issue of the certificate and within six months from the date of payment of the toll. It has to be accompanied by the original receipts. If these procedural requirements are not fulfilled, the Municipality may decline to refund the toll and relegate the claimant to a suit. It would then be open to the party claiming a refund to seek the assistance of the Court, and to prove by evidence which is in law admissible that the goods transported by him fell within the order issued under Section 157(3) of the Act.

3 6 State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201. 7 State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201. 1 C.I.T. v. Gappumal Kanhaiya Lal, 1950 SCR 563. 2 Gopal Narain v. State of U.P., (1964) 3 SCR 869. 3 Kirpal Singh Duggal v. Municipal Board, (1968) 3 SCR 551.

131 Exemption of lands and buildings used for charitable purposes - Dealing with the exemption to lands and buildings exclusively

occupied and used for charitable purpose under Section 115(4)(a) of the Delhi Municipal Act, in *Christian Children Fund Inc.v. Municipal Corporation of Delhi* 4 , the Apex Court held as under (para 4) : "The premises required by an organization for its administrative office area is an essential and an integral part of its Charitable activities. Sometimes the administrative office of such organizations may be located where the charitable activity or activities are carried on and sometimes it is located away from such place depending upon the availability of the premises and convenience. So long as the premises in which the administrative office of the Charitable organization is carried on are exclusively used and occupied by its office, the premises would be ones covered by the exemption provided under the said provisions. To hold otherwise, viz., that is only the premises where actual charitable activity is carried on alone is qualified for the exemption is too rational."

128A. Tax On Deeds Of Transfer Of Immovable Property :-

[(1) Where a 7 [Municipality] has imposed a tax referred to in clause (xiii-B) of sub-section (1) of Section 128, the duty imposed by the Indian Stamp Act, 1899, on any deed of transfer of immovable property shall, in the case of immovable property situated within the limits of such municipality, be increased by two percent, on the amount or value of the consideration with reference to which the duty is calculated under the said Act : Provided that the Municipality may, by a special resolution, with the prior approval of the State Government, raise the aforementioned percentage of the increase in stamp duty up to five.]

(2) All collections resulting from the said increase shall, after the deduction of incidental expenses, if any, be paid to the 1 [Municipality] concerned by the State Government in such manner as may be prescribed.

(3) For the purposes of this sub-section, Section 27 of the Indian Stamp Act, 1899, shall be so read and construed as if it specifically requires the particulars referred to therein to be separately set forth in respect of, -

(a) property situate within the limits of a municipality; and 4 (1994) 4 SCC 337 : 1994 AIR SCW 2786. 5Board of Secondary Education, Bhopal v. Municipal Corporation, Bhopal, AIR 2005 MP 149. 6 Subs. by U.P. Act No. 29 of 1966. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.132

(b) property situate outside the limits of a municipality.

(4) For the purposes of this section all references in Section 64 of the Indian Stamp Act, 1899, to the Government shall be deemed to include the 2 [Municipality] as well.

129. Restriction On The Imposition Of Water-Tax :-

The imposition of a tax under clause (x) of sub-section (1) Section 128 shall be subject to the restriction that the tax shall not be imposed, -

(i) on land exclusively used for agricultural purposes unless water is supplied by the 5 [Municipality] for such purpose; or

(ii) on a plot of land or building the annual value whereof, does not exceed rupees three hundred and sixty, and to which no water is

supplied by the 6 [Municipality]; or

(iii) on any plot or building no part of which is within the radius prescribed for the municipality from the nearest stand-pipe or other water works whereat water is made available to the public by the 7 [Municipality]. Explanation - For the purposes of this section, -

(a) "building" shall include the compound, if any, thereof, and where there are several buildings in a common compound, all such buildings and the common compound;

(b) "a plot of land" means any piece of land held by a single occupier, or held in common by several co-occupiers whereof no one portion is entirely separated from other portion by the land of another occupier or of other co-occupier or by the public property.]

NOTE Section 129 of the Act provides that imposition of tax under clause (10) of sub-section (1) of Section 128 of the Act shall be subject to the restriction that tax shall not be imposed on the land exclusively used for agricultural purpose unless water is supplied by the board for such purposes. Clause (1) of sub-section (1) of 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 10 of 1978. 4 Ins. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.133 Section 128 empowers the Municipal Board to impose tax on the annual value of the building or land or both.

130. Restrictions On The Imposition Of Other Taxes :-

The imposition of a tax under clause (xi) or (xii) of sub-section (1) of Section 128 shall be subject to the restriction that the tax shall not be assessed on any house or building or leviable from the occupier of any house or building unless the 3 [Municipality] under clause (a) of Section 196 undertakes the house scavenging or the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools of such house or building.]

130A. Power Of State Government To Require Municipality To Impose Taxes :-

(1) The 6 [State Government] may, by general or special order, published in the Official Gazette, require a 7 [Municipality] to impose any tax mentioned in Section 128, not already imposed, at such rate and within such period as may be specified in the notification and the 8 [Municipality] shall thereupon act accordingly.

(2) The 9 [State Government] may require a 10 [Municipality] to 11 [increase, modify or vary] the rate of any tax already imposed and thereupon the 1 [Municipality] shall 2 [increase, modify or vary] the tax as required.

(3) If the 3 [Municipality] fails to carry out the order passed under sub-section (1) or (2) the 4 [State Government] may pass suitable order 5 [imposing, increasing,

modifying or varying] the tax and thereupon the order of the 6 [State Government] shall operate as if it had been a resolution only passed by the 7 [Municipality] 8 [under sub-section (2) of Section 134]. 1 Krishi Utapadan Mandi Samiti v. State of U.P., 1991 (Suppl) RD 425. 2 Subs. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by ALO 1950. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by ALO 1950. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 1 of 1955. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 1 of 1955. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 1 of 1955. 6 Subs. by ALO 1950. 7 Subs. by U.P. Act No. 12 of 1994. 8 Added by U.P. Act No. 26 of 1964.

130B. Pooling Of Receipts Of Taxes For Certain Purposes :-

All moneys derived from water, drainage, scavenging and conservancy taxes mentioned in clauses (x), (x-a), (xi) and (xii) of sub-section (1) of Section 128 and all other incomes derived from water-works and sullage farms and disposal of excrementitious and polluted matters collected from privies, urinals and cesspools shall be pooled together and shall be used for purposes connected with the construction, maintenance, extension or improvement of the water-works and drainage works and arrangements for scavenging and collection, removal and disposal of excrementitious and polluted matters from privies, urinals and cesspools including maintenance of sullage farms.]

131. Framing Of Preliminary Proposals :-

(1) When a [Municipality] desires to impose a tax, it shall, by special resolution, frame proposal specifying, -

(a) the tax, being one of the taxes described in sub-section (1) of Section 128, which it desires to impose;

(b) the persons or class of persons to be made liable, and the description of property or other taxable things or circumstances in respect of which they are to be made liable, except where and in so far as any such class or description is already sufficiently defined under clause (a) or by this Act;

(c) the amount or rate leviable from each such person or class of persons;

(d) any other matter referred to in Section 153 which the 11 [State Government] requires by rule to be specified.

(2) The 1 [Municipality] shall also prepare a draft of the rules which it desires the 2 [State Government] to make in respect of the matters, referred to in Section 153.

(3) The 3 [Municipality] shall, thereupon publish in the manner prescribed in Section 94 the proposals framed under sub-section (1) and the draft rules framed under sub-section (2) along with a notice in the form set forth in Schedule III. NOTE Section 131 provides that when a board desire to impose a tax it shall, by special resolution frame a proposal specifying the tax, the person or class of persons to be made liable and the description of the

property or other taxable things or circumstances in respect of which they are to be made liable, the amount or rate leviable from such person or class of persons and any other matter which the State Government may require by rules to be specified. The same section requires the 9 Added by U.P. Act No. 26 of 1964. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by ALO 1950. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by ALO 1950. 3 Subs. by U.P. Act No. 12 of 1994.135 Board to prepare a draft of the rules which it desires the State Government to make and the Board is required to publish the proposal, the draft rules so framed, and a notice in the prescribed form, in the manner laid down by Section 94. That section says that every resolution passed by a Board at a meeting shall, as soon thereafter as may be, be published in a local paper published in Hindi and where there is no such local paper, in such manner as, the State Government may, be general or special order, direct.

132. Procedure Subsequent To Framing Proposals :-

(1) Any inhabitant of the 5 [Municipal area] may, within a fortnight from the publication of the said notice, submit to the 6 [Municipality] an objection in writing to all or any of the proposals framed under the preceding section, and the 7 [Municipality] shall take any objection so submitted into consideration and pass order thereon by special resolution.

(2) If the 8 [Municipality] decides to modify its proposals or any of them, it shall publish notified proposals and (if necessary) revised draft rules along with a notice indicating that the proposals and rules (if any) are in modification of proposals and rules previously published for objection : 9 [Provided that no such publication shall be necessary where the modification is confined to reduction in the amount or rate of the tax originally proposed.]

(3) Any objection which may be received to the modified proposals shall be dealt with in the manner prescribed in sub-section (1).

(4) When the 1 [Municipality] has finally settled its proposals it shall submit them along with the objections (if any) made in connection therewith to the 2 [Prescribed Authority].

133. Power Of State Government Of [Prescribed Authority] To Reject, Sanction Or Modify Proposals :-

(1) 4 [If] the proposed tax falls under clauses (i) to (xii) of sub-section (1) of Section 128, the 5 [Prescribed Authority] after

considering the objection received under sub-section (4) of Section 132 may either refuse to sanction the proposals or return them to the 6 [Municipality] for further consideration, 4 Municipal Board v. Raghuvendra Kripal, (1966) 1 SCR 950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Added by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 18 of 1986. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 136 or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as it deems fit.

(2) In any other case, the 7 [Prescribed Authority] shall submit the proposals and objections to the State Government, who may pass any of the orders desired in sub-section (1).

(3) 8 [* * *] NOTE Imposition of tax - Section 133 of the U.P. Municipalities Act fully authorizes the prescribed authority who is designated to be the commissioner of the division to impose the tax falling under clauses (i) to (xii) of sub-section (1) of Section 128. It is only in the case of a municipality other than a city that the ultimate authority to approve the proposals to impose a tax vests in the State Government. The premise on which the petition has been filed, namely, that the commissioner had no power to impose a tax has thus no basis.

134. Resolution Of [Municipality] Directing Imposition Of Tax :-

(1) When the proposals have been sanctioned by the Prescribed Authority or the State Government 11 [* * *] the State Government, after taking into consideration the draft rules submitted by the 12 [Municipality], shall proceed forthwith to make under Section 296 such rules in respect of tax as for the time being it considers necessary.

(2) When the rules have been made, the order of sanction and a copy of the rules shall be sent to the 1 [Municipality], and thereupon the 2 [Municipality] shall by special resolution direct the imposition of the tax with effect from a date to be specified in the resolution. NOTE In Nizam Ali v. Municipal Board, Fatehpur 3 , the Court held that in the absence of any proof of special resolution of the Board, as provided under Section 134 of the Act, the tax cannot be imposed. 4 7 Subs. by U.P. Act No. 7 of 1949. 8 Omitted

by ALO 1937. 9 Ambar Theatre v. Commissioner, Meerut Division, Meerut, 1991 (Suppl.) RD 397. 10 Subs. by U.P. Act No. 12 of 1994. 11 Omitted by ALO 1937. 12 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 1962 ALJ 226. 4 Prakash Talkies and others v. Nagar Palika Parishad, Etawah and another, (2002) 2 SAC 550. 137

135. Imposition Of Tax :-

(1) A copy of the resolution passed under Section 134 shall be submitted to the 5 [State Government] if the tax has been sanctioned by the 6 [State Government] and to the 7 [Prescribed Authority] in any other case.

(2) Upon receipt of the copy of the resolutions the 8 [State Government] or 9 [Prescribed Authority] as the case may be, shall notify in the Official Gazette, the imposition of the tax from the appointed date, and the imposition of a tax shall in all cases be subject to the condition that it has been so notified.

(3) A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act. NOTES Scope of - Section 135(3) of the U.P. Municipalities Act provides that a notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of the Act. Therefore, any minor lapse in the procedure would stand cured by the issue of the notification. 10 It cannot be said that sub-section (3) of Section 135 which leads to the conclusion that the imposition of the tax is according to the U.P. Municipalities Act is discriminatory because it only concludes objections against the procedure followed in the imposition of the tax. 11 Place of consumption - "The word therein does not mean that all the act of consumption must take place in the area of the Municipality. It is sufficient if the goods are brought inside the area to be delivered to the ultimate consumer in that area because the taxable event is the entry of goods which are meant to reach an ultimate user or consumer in the area. Indeed, the consumer may never consume them as, for example, a motorist buys a tin of oil and finds that it does not suit his vehicle and leaves it lying on his shelf. The goods must be regarded as having been brought in for purposes of consumption when a person brings them either for his own use or consumption, or to put them in the way of others in the area, who are to use and consume. In this process the act of sale is

merely the means for putting, the goods in the way of use or consumption. It is an earlier stage, the ultimate destination of the goods being use or consumption. The earlier stage, namely, the sale by him, does not save the person who brought the goods into the local area from liability to the tax if the goods were brought inside for consumption or use. In other words, a sale of the goods brought inside, even though not expressly mentioned in the description of 5 Subs by ALO 1950. 6 Subs. by ALO 1950. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs. by ALO 1950. 9 Subs. by U.P. Act No. 7 of 1949. 10 Indira Rani Devi v. Nagar Palika, Puranpur, (2000) 1 SAC 326. 11 Municipal Board v. Raghuvendra Kripal, (1966) 1 SCR 950. 138 octroi as it stood formerly, was implicit, provided the goods were not re-exported out of the area but were brought inside for use or consumption by buyers inside the area. In this sense the amplification of the description both in the Government of India Act, 1935 and the Constitution did not make any addition to the true concept of octroi as explained above. That concept included the bringing in of goods in a local area so that the goods come to a repose there". 1 Power to tax - In the case of State of W.B. v. Kesoram Industries Ltd 2 the ,. Constitution Bench of the Court has held that a power to tax may be exercised for the purposes of regulating trade, industry, commerce or any other activity, the purpose of levying such an import is the exercise of sovereign. Power to effectuate regulation though incidentally the levy may contribute to the revenue.

136. Procedure For Altering Taxes :-

The procedure for abolishing a tax, or for altering a tax in respect of the matters specified in clauses (b) and (c) of subsection (1) of Section 131, shall, so far as may be, the procedure prescribed by Section 131 to 135 for the imposition of a tax.

137. Power Of State Government To Remedy Or Abolish Tax :-

(1) Whenever it appears, on complaint made or otherwise, to the 4 [State Government], that the levy of any tax is contrary to the public interest or that any tax is unfair in its incidence the 5 [State Government] may, after considering the explanation of 6 [the municipality] concerned, by order require such 7 [Municipality] to take measures, within a time to be specified in the order, for the removal of any defect which it considers to exist in the tax or in the method of assessing or collecting tax.

(2) Upon the failure or inability of the 1 [Municipality] to comply, to the satisfaction of the 2 [State Government], with an order made under sub-section (1), the 3 [State Government] may by notification suspend the levy of the tax or of any portion thereof until the defect is removed, or may abolish or reduce the tax.

Consolidated Taxes

138. Consolidation Of Taxes :-

(1) For the purposes of assessing, levying or collecting, but not for the purpose of imposing or granting exemption from, the taxes described in clauses (i), (x) and (xi) of sub-section (1) of Section 128, a 1 *Acqueous Victuals (P) Ltd. v. State of U.P.* (1998) 5 SCC 474 at p. 482. 2 (2004) 10 SCC 201. 3 *State of T.N. v. M. Krishnappan and another*, (2005) 4 SCC 53. 4 Subs. by ALO 1950. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by ALO 1950. 3 Subs. by ALO 1950. 139 4 [Municipality] may consolidate any two or more of such taxes which are imposed upon buildings or lands or both.

(2) Provided that in any register or assessment list relating to a consolidated tax and used for the purpose of informing any person of his liability thereunder or for the purpose of securing compliance with the provision of Section 129 or 130, the 5 [Municipality] shall apportion the consolidated tax amongst the several taxes comprised therein, so as to show approximately the amount assessed or collected on account of each separate tax.

139. Deduction Required By Exemptions :-

(1) In assessing a consolidated tax, effect shall be given to any partial or total exemption from any single tax comprised therein.

(2) Such effect shall be given, -

(a) in the case of partial exemption, by means of the deduction from the total amount of the consolidated tax which would otherwise be leviable or assessable in respect of any buildings or lands or both to which the exemption applies, of a proportionate part, corresponding to the exemption, of the amount which might otherwise have been assessed on account of the single tax; and

(b) in the case of a total exemption, by means of the deduction from such total amount of the whole amount assessed, on account of the single tax. Assessment and levy of taxes on the annual value of buildings or lands or both

140. Definition Of Annual Value :-

(1) "Annual value" means, -

(a) in the case of railway stations, hotels, colleges, schools, hospitals, factories, and other such buildings, a proportion not exceeding five per centum, to be fixed by rule made in this behalf of the sum obtained by adding the estimated present cost of erecting the building to the estimated value of the land appurtenant thereto; and

(b) in the case of a building or land not falling within the provisions of clause

(a), the gross annual rent for which such building, exclusive of furniture or machinery therein, or such land is actually let or where the building or land is not let or in the opinion of the 1 [Municipality] is let for a sum less than its 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 140 fair letting value, might reasonably be expected to let from year to year.

(2) Provided that where the annual value of any building would by reason of exceptional circumstances, in the opinion of the 2 [Municipality] be excessive if calculated in the aforesaid manner, the 3 [Municipality] may fix the annual value of any less amount which appears to it equitable. NOTES Annual value - The Apex Court in Dewan Daulat Rai Kapoors case 4 and Balbir Singhs case 5, had laid down that the annual value of the building has to be determined on the basis on which building is reasonably expected to be let and therefore, the rent has to be determined under the provisions of the Rent Act for determining the annul value. 6 Annual value-Calculation of - The quantum of the "annual value" is dependent on the use to which the building is put and this, and not letting value, is therefore, the basis adopted by the statute, for it is difficult to conceive of a building when used as a railway station, hotel, college, school, hospital or factory being ordinarily open to letting out. 7 Assessment of premises let out to bank - A bare reading of Section 140(1) of the Act makes it clear that the buildings existing in the municipal area have come to be divided into two distinct categories, firstly those used as railway stations, hotels, colleges, schools, hospitals and factories including other such buildings and secondly those not used as such but have been actually let out and if not actually let out, it might reasonably be expected to be let out from year to year. The purpose of determining the annual valuation of building is the levy of taxes

under the Act. If a building falls in any of the categories mentioned in clause (a), it cannot possibly fall within the ambit of clause (b). In other words, where clause (a) applies, clause (b) would not be attracted. Both the clauses are mutually exclusive and the former excludes the latter. A bank does not come under any of the categories of the buildings occupied and used for railway stations, hotels, colleges, hospitals, factories etc. It was held that 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 (1980) 1 SCC 685. 5 (1985) 1 SCC 167. 6 M/s PartapSteel Rolling Mills (1935) Ltd., v. Municipal Corporation of Amritsar and another, AIR 2005 P&H 164. 7 Nagar Palika Parishad, Sardhana District, Meerut v. Chandra Prakash and another, (2001) 1 SAC 135. 141 clause (b) is the provision relevant to the building in question, which was fetching rent and not clause (a) which applies to buildings other than those let out on rent. 1 Net annual value- Assessment of - The methods for arriving at the net annual value are given as the same three, namely,

- (i) the actual rent if the premise were let,
- (ii) hypothetical tenancy, and
- (iii) capital cost from which the annual value was determined at a certain percentage which may not be the same for lands and buildings.

141. Preparation Of Assessment List :-

(1) When a tax on buildings or lands or both is imposed, the 3 [Municipality] shall cause an assessment list of all buildings or lands or both 4 [in the 5 [municipal area] or any part thereof to be prepared from time to time] containing, -

- (a) the name of the street or mohalla in which the property is situated;
- (b) the designation of the property, either by name or by number sufficient for identification;
- (c) the names of the owner and occupier, if known;
- (d) the annual letting value or other particulars determining the annual value; and
- (e) the amount of the tax assessed thereon.

(2) For the purpose of making such assessment list, the 6 [Municipality] may, from time to time appoint, with or without remuneration, any person or persons, whether members or not, and the persons or persons so appointed may, for such purpose make an inspection of any property concerned. NOTES Preparation

of assessment list - Section 141 of the Act provides that when a tax on building or lands or both is imposed, the board shall cause an assessment list of all buildings or land or both in municipality or any part thereof to be prepared from time to time containing certain particulars. One of the required particulars is that in the assessment list the names of the owner and occupier if known, should be shown and thereafter list is published under Section 142 of the Act and if any person objects regarding any particulars shown in such list, the same is to be considered before 1 Nagar Palika Parishad, Sardhana District, Meerut v. Chandra Prakash and another, (2001) 1 SAC 135. 2 .Patel Gordhandas Hargovindas v. Municipal Commr., (1964) 2 SCR 608. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 3 of 1987. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 142 finalization of the list. The entry in the assessment list under Section 146 of the Act is conclusive proof for any purpose connected with a tax to which list refers of the amount leviable in respect of any building or land during the period to which the list relates and for the purpose of assessing any other municipal tax, of the annual value of any building or land during the said period. 1 Scope of the section - The scheme underlying the provisions contained in Section 141 to 145 of the U.P. Municipalities Act appears to be that the assessment list prepared under Section 141 of the Act contains only tentative assessment. This list is required to be published as provided for in Section 142 of the Act inviting objections to the entries contained in the list that the said list is authenticated by the competent authority. Thereafter as contemplated under Section 144(2) of the Act, the list so authenticated is deposited in the municipal office and thereupon declared by public notice to be open for inspection. In the aforesaid circumstances, it is obvious that an order disposing of an objection is anterior to the authentication of the list contemplated under Section 144(2) of the said Act. Moreover, the assessment list is made valid from the date on which the list takes effect in the Municipality and until 1 st of April next following the completion of a new list. It is so provided in Section 145(2) of the Act. The aforesaid provision clearly indicates that even after declaration contemplated under Section 145(2) of the Act the Municipality concerned has to specify a date from which the list is to take effect.

142. Publication Of List :-

When the assessment list has been prepared the 3 [Municipality]

shall give public notice of the place where the list or a copy thereof may be inspected; and every person claiming to be either owner or occupier or property included in the list, and an agent of such person, shall be at liberty to inspect the list and to make extract therefrom without charge.

143. Objections To Entries In List :-

(1) The 4 [Municipality] shall at the same time give public notice of a date, not less than one month thereafter, when it will proceed to consider the valuations and assessments entered therein, and in all cases in which any property is for the first time assessed or the assessment is increased, it shall also give notice thereof to the owner or occupier of the property, if known.

(2) All objections to valuations and assessments shall be made to the 1 [Municipality], before the date fixed in the notice, by application in writing stating the grounds on which the valuation and assessment are disputed, and all applications 1 Tilak Dhari v. Addl. Chief Judicial Magistrate, Jaunpur and others, 1992 (Suppl.) RD 277. 2 Surendra Kumar Jain v. Shanti Swaroop Jain, AIR 1993 All. 273. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 143 so made shall be registered in a book to be kept by the 2 [Municipality] for the purpose.

(3) The 3 [Municipality], or a committee empowered by delegation in this behalf, or an officer 4 [of Government] or the 5 [Municipality] to whom, with the permission of the 6 [Prescribed Authority] the 7 [Municipality] delegates, and it is hereby empowered so to delegate by resolution, powers in this behalf, shall, after allowing the applicant an opportunity of being heard in person or by agent, -

(a) investigate and dispose of the objections;

(b) cause the result thereof to be noted in the book kept under subsection (2); and

(c) cause any amendment necessary in accordance with such result to be made in the assessment list. NOTE Section 143(1) of the Act provides that besides giving public notice of a date not less than one month, the authority concerned will proceed to consider the valuation. It further provides that notice shall also be given to the owner and occupier of the property if known. Sub-section (2) provides that "all objections to valuations and assessments shall be made to the board, before the date fixed in the notice, by

application in writing stating the grounds on which the valuation and assessment are disputed, and all applications so made shall be registered in a book to be kept by the board for the purpose. These provisions are mandatory and have to be followed before fixing the annual value or increasing the annual value and the assessment.

144. Authentication And Custody Of List :-

(1) When all objections made under Section 143 have been disposed of, and all amendments required by sub-section (3) of that section have been made in the assessment list, the said list shall be authenticated by the signature of the President or, in the case of delegation under Section 143 to a committee or to an officer 9 [of Government] or of the 1 [Municipality], by the signatures of not less than two members of such committee or by a signature of the officer aforesaid; and the person or persons so authenticating the list shall certify the consideration of all objections duly made and the amendment of the list so far as required by the decisions on such objections. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 M/s Triveni Engineering Works Ltd. v. Municipal Board, 1999 (90) RD 692. 9 Subs by ALO 1950. 1 Subs. by U.P. Act No. 12 of 1994.

(2) The list so authenticated shall be deposited in the municipal office, and shall, thereupon, be declared by public notice to be open for inspection.

145. Revision And Duration Of List :-

(1) A new assessment list shall ordinarily be prepared in the manner prescribed by Section 141 to 144, once in every five years.

(2) Subject to any alteration or amendment made under Section 147 and to the result of any appeal under Section 160, every valuation and assessment entered in a valuation list shall be valid from the date on which the list takes effect 2 [in the 3 [municipal area] or part thereof and until the first day of the month next following the completion of the new list.] NOTE Ordinarily- Interpretation of - In the case of Harish Chndra v. 1 st ADJ 4 , the word "ordinarily" occurring in Rule 10(5) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 has been interpreted as follows : "The word ordinarily means in the large majority of cases but not invariably"

145A. Adoption Of Value Of Property Determined Under U.P. Act Xii Of 1962 :-

Notwithstanding anything contained elsewhere in this Act the 7 [Municipality] may by special resolution decide that the taxable value of buildings and lands determined under clause (ii) of Section 4 of the Uttar Pradesh (Nagar Khsettra) Bhumi Aur Bhawan Kar Adhiniyam, 1962, shall be the annual value for the purpose of this Act.]

146. Conclusiveness Of Entries In List :-

An entry in an assessment list shall be conclusive proof, -

- (a) for any purpose connected with a tax to which the list refers, of the amount leviable in respect of any building or land during the period to which the list relates; and
- (b) for the purpose of assessing any other municipal tax, of the annual value of any building or land during the said period. 2 Subs. by U.P. Act No. 3 of 1987. 3 Subs. by U.P. Act No. 12 of 1994. 4 1978 ALJ 1184. 5 J.K. Charitable Trust, Kanpur v. Municipal Board, Mussorrie, 1991 (Suppl.) RD 370. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994.

147. Amendment And Alteration Of List :-

(1) The 1 [Municipality] may at any time alter or amend the assessment list, -

- (a) by entering therein the name of any person or any property which ought to have been entered or any property which has become liable to taxation after the authentication of the assessment list; or
- (b) by substituting therein for the name of owner or occupier of any property the name of any other person who has succeeded by transfer or otherwise to the ownership or occupation of the property; or
- (c) by enhancing the valuation of, or assessment on any property which 2 [has become incorrectly valued or assessed or which, by reason of fraud, misrepresentation or mistake, has been incorrectly valued or assessed]; or
- (d) by re-valuing or re-assessing any property the value of which has been increased by additions or alterations to buildings; or
- (e) where the percentage on the annual value at which any tax is to be levied has been altered by the 3 [Municipality] under the provisions of Section 136, by making a corresponding alteration in the amount of the tax payable in each case; or
- (f) by reducing, upon the application of the owner or on satisfactory evidence that the owner is traceable and the need for reduction

established, upon its own initiative, the valuation of any building which has been wholly or partly demolished or destroyed, or

(g) by correcting any 4 [Clerical, arithmetical or other apparent error;]

(2) Provided that 5 [Municipality] shall give at least one months notice to any person interested of any alteration which the 6 [Municipality] proposes to make under clause (a), (b), (c) or (d) of sub-section (1) and of the date on which the alteration will be made.

(3) The provisions on sub-sections (2) and (3) of Section 143 applicable to the obligations thereunder mentioned shall, so far as may be apply to any objection 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 3 of 1987. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 1 of 1955. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994.146 made in pursuance of a notice issued under sub-section (2) and to any application made under clause (f) of sub-section (1).

(4) Every alteration made under sub-section (1) shall be authenticated by the signature or signatures of the person or persons authorized by Section 144 and subject to the result of an appeal under Section 160, shall take effect from the date on which the next installment falls due. NOTE Scope of - The use of the expression "has become incorrectly valued or assessed" clearly shows that due to the change in the circumstances, the assessment which has been originally correct may become incorrect. In view of the amendment it is not necessary to allege in the notice that the previous incorrect correction was the result of the fraud, misrepresentation or alteration to the building. A close reading of sub-section (4) of Section 147 shows that the amendment and alteration of the annual list is final and subject to the result of an appeal underSection 160 of the Act.

148. Obligation To Supply Information For Purposes Of Amendment :-

(1) When a building is built, rebuilt or enlarged, the owner shall give notice thereof to the 2 [Municipality] within fifteen days from the date of completion of such building, rebuilding or enlargement or from the date of the occupation of such building, whichever date happens first.

(2) Any person failing to give the notice required by sub-section (1) shall be punished upon conviction with a fine which may extend to

fifty rupees or ten times the amount of the tax payable on the said building or enlargement for a period of three months, whichever is greater. NOTE Under Section 148 of the Act an obligation has been cast upon an owner of the building to give notice to the board within 15 days from the date of the completion of such building, re-building or enlargement or from the date of the occupation of such building whichever date happens first. Under the sub-section (2) of the Section 148 a penalty for not giving the notice as required under sub-section (1) of Section 148 has been provided.

149. Liability For Payment Of Certain Taxes On Annual Value :-

(1) 1 [Except when otherwise provided by rule], every tax [other than a scavenging tax or tax for 1 Smt. Sushila Devi v. Nagar Palika Parishad, Hathras and another, (2005) 1 SAC 697. 2 Subs. by U.P. Act No. 12 of 1994. 3 Smt. Sushila Devi v. Nagar Palika Parishad, Hathras and another, (2005) 1 SAC 697. 1 Ins. by U.P. Act No. 2 of 1919.147 the cleansing of latrines and privies] on the annual value of buildings or lands or of both shall be leviable primarily from the actual occupier of the property upon which the said taxes are assessed, if he is the owner of the buildings or lands or holds them on a building or other lease from the 2 [Government] or from the 3 [Municipality], or on a building or lease from any person.

(2) In any other case the tax shall be primarily leviable as follows, namely, -

- (a) if the property is let, from the lessor;
- (b) if the property is sublet, from the superior lessor;
- (c) if the property is unlet, from the person in whom the right to let the same vests.

(3) On failure to recover any sum due to account of such tax from the person primarily liable, the 4 [Municipality] may recover from the occupier of any part of the buildings or lands in respect of which it is due, that portion thereof which bears to the whole amounts due the same ratio as the rent annually payable by such occupier bears to the aggregate amount of rent payable in respect of the whole of the said buildings or lands, or to the aggregate amount of the letting value thereof in the authenticated assessment list.

(4) An occupier who makes any payments for which he is not primarily liable under the foregoing provisions, shall, in the absence

of any contract to the contrary, be entitled to be reimbursed by the person primarily liable.

150. Liability For Payment Of Other Such Taxes :-

(1) A scavenging tax, or a tax for the cleansing of latrines and privies, on the annual value of buildings or lands or of both, shall be levied from the actual occupier of the property upon which the taxes are assessed.

(2) Provided that, where such property is let to more occupiers than one, the 5 [Municipality] may at its option levy the tax from the lessor instead of from the actual occupiers.

(3) A lessor from whom a tax is levied under sub-section (2) may, in the absence of a contract to the contrary, recover the tax from any or all of the actual occupiers.

151. Remission By Reason Of Non-Occupation :-

(1) In a 6 [municipal area] other than one situated wholly or partly in a hilly tract, when a building or land has remained vacant and unproductive of rent for ninety or more consecutive days during any year the 7 [Municipality] shall remit or refund so much of the tax of that years as 2 Subs. by ALO 1950. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994.148 may be proportionate to the number of days that the said building or land has remained vacant and unproductive of rent.

(2) When in any such 1 [municipal area] a building consists of separate tenements one, or more than one, of which has remained vacant and unproductive of rent for any such period as aforesaid, the 2 [Municipality] may remit or refund such portion (if any) of the tax or instalment as a prescribed by rule.

(3) Provided that no remission shall be granted unless notice in writing of the fact of the building or land being vacant and unproductive of rent has been given to the 3 [Municipality], and that no remission or refund shall take effect for any period previous to the day of the delivery of such notice.

(4) The burden of proving the facts entitling a person to relief under this section shall be upon him.

(5) For the purposes of this section a building or land shall not be deemed vacant, if maintained as a pleasure resort or town or country house, or be deemed unproductive of rent, if let to a

tenant who has a continuing right of occupation thereof, whether he is in actual occupation or not.

152. Obligation To Give Notice Of Re-Occupation :-

(1) The owner of a building or land for which a remission or refund of the tax 4 [has been applied for, or given] under the last preceding section, shall give notice of the re-occupation of such building or land within fifteen days of such re-occupation.

(2) Any owner failing to give the notice required by sub-section (1) shall be punished upon conviction with a fine which shall not be less than twice the amount of tax payable on such building or land for the period during which it has been reoccupied without notice, and which may extend to fifty rupees or to ten times the amount of the said tax, whichever sum is the greater. Collection, composition, exemption and other matters relating to taxation

153. Rules As To Assessment, Collection And Other Matters :-

The following matters shall be regulated and governed by rules except in so far as provision therefore is made by this Act, namely,

-

(a) the assessment, collection or composition of taxes 5 ;[* * *]

(b) the prevention of evasion of taxes;

(c) the system on which refunds shall be allowed and paid; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Omitted by U.P. Act No. 9 of 1991.149

(d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress;

(e) the rates to be charged for maintaining live-stock distrained: and

(f) any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the 1 [State Government], necessary.

154. Section 154 :-

155. Section 155 :-

155ASection 155A

156. Composition :-

(1) Subject to the provisions of any rule, a [Municipality] may by a

special resolution confirmed by the 4 [Prescribed Authority] provide that all or any persons may be allowed to compound for a tax.

(2) Every sum due by reason of the composition of a tax under sub-section (1) shall be recoverable in the manner provided by Chapter VI.

157. Exemption :-

(1) A 5 [Municipality] may exempt, for a period not exceeding one year, from the payment of a tax, or any portion of a tax, imposed under this Act any person who is in its opinion, by reason of poverty, unable to pay the same, and may renew such exemption as often as it deems necessary.

(2) A 6 [Municipality] may, by a special resolution confirmed by the 7 [Prescribed Authority], exempt from the payment of tax, or any portion of a tax, imposed under this Act any person or class of persons or any property or description of property.

(3) The 8 [State Government] may, by order, exempt from payment of tax, or any portion of a tax, imposed under this Act any person or class of persons or any property or description of property.

158. Obligation To Disclose Liability :-

(1) The 10 [Municipality] or any Assessing Authority under this Act may by written communication call upon an 1 Subs by ALO 1950. 2 Omitted by U.P. Act No. 9 of 1991. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs by ALO 1950. 9 Subs. by U.P. Act No. 26 of 1964. 10 inhabitant of the 11 [municipal area] to furnish such information or produce such records, books of account and documents as may be necessary in order to ascertain], -

(a) whether such inhabitant is liable to pay a tax imposed under this Act;

(b) at what amount he should be assessed;

(c) the annual value of the building or land which he occupies and the name and address of the owner. 1 [(2) If an inhabitant so called upon to furnish information or to produce records, books of account or documents, omits to furnish or produce the same or, if furnished or produced, the same appear to the 2 [Municipality] or the Assessing Authority to be incorrect or incomplete, the 3 [Municipality] or the Assessing Authority, as the case may be, shall after making such enquiry as it considers necessary make the

assessment to the best of its judgment.]

159. Powers Of Discovery :-

Subject to the conditions and restrictions specified in sub-section (2) of Section 287, the 4 [President], the executive officer and, if authorized in this behalf by resolution, any other member, officer or servant of the 5 [Municipality] may enter, inspect and measure a building for the purposes of valuation, or enter and inspect a stable, coach house or other place wherein there is reason to believe that there is a vehicle or animal liable to taxation under this Act.

159A. Rounding Off Of Figures :-

In computing the amount of any tax under this Act a fraction of a rupee less than five paise or which is not a multiple of five paise shall be rounded off to five paise or to the next higher multiple of five paise as the case may be.] Appeal against taxation

160. Appeals Relating To Taxation :-

(1) In the case of a tax assessed upon the annual value of buildings or lands or both an appeal against an order passed under sub-section (3) of Section 143 or under sub-section (3) of Section 147, and, in the case of any other tax, an appeal against an assessment, or any alteration of an assessment, may be made the District Magistrate or to such other officer as may be empowered by the 7 [State Government] in this behalf. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs by ALO 1950.

(2) 8 [* * *] NOTE Levy of tax-Judicial interference - It is only where there is abuse of its powers and transgression of the legislative function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference.

161. Limitation And Preliminary Deposit Of Tax Claimed :-

No such appeal shall be heard and determined unless, -

(a) the appeal is in the case of a tax assessed on the annual value of buildings or lands or both, brought within thirty days next after the date of communication of the order (exclusive of the time

requisite for obtaining a copy thereof) and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days next after the date of the first demand under the assessment or alteration of assessment; and (b) the amount claimed from the appellant has been deposited by him in the municipal office. NOTE Condition of Pre-deposit-Does not restrict the right to appeal - In the case of I.T.C. Ltd. v. State of U.P. CMWP No.1398 of 2004, decided on 4.10.2004, the Court held while considering the imposition of house tax and water tax that if the orders have been passed without affording opportunity of hearing as contemplated under the law, the right of appeal is not an efficacious alternative remedy and the Court, on this ground should not refuse to exercise the jurisdiction under Article 226 of the Constitution of India. 2 A plain reading of Section 161(b) of the Act shows that the entire amount claimed by the Municipal Board on the date of filing of the appeal should be deposited by the appellant before his appeal could be entertained and heard. The provisions of Section 161(b) are mandatory and the pre-deposit condition has to be complied with and there is no escape from depositing the said amount. 3 8 Omitted by U.P. Act No. 12 of 1994. 1 Sri Krishna Das v. Town Area Committee, (1990) 3 SCC 645. 2 M/s Mawana Sugar Ltd. v. State of U.P., (2006) 1 SAC 21. 3 U.P. State Warehousing Corporation v. Chief Judicial Magistrate, Bulandshahr, (2000) 1 SAC 58.

162. Reference To High Court :-

(1) If, during the hearing of an appeal under Section 160, a question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of a person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the High Court.

(2) On reference being made under sub-section (1), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule of the Code of Civil Procedure, 1908 (Act V of 1908), or such other rules as are made by the High Court under Section 122 of that Code.

163. Costs :-

(1) In every appeal the costs shall be in the discretion of the officer deciding the appeal.

(2) Costs awarded under this section to the 1 [Municipality] shall be recoverable by the 2 [Municipality] in the manner provided by Chapter VI.

(3) In the 3 [Municipality] fails to pay costs awarded to an appellant within ten days after the date of the communication to the 4 [Municipality] of the order or payment thereof, the officer awarding the costs may order the persons having the custody of the balance of the municipal fund to pay the amount.

164. Bar To Jurisdiction Of Civil And Criminal Courts In Matters Of Taxation :-

(1) No objection shall be taken to a valuation or assessment, nor shall the liability of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.

(2) The order of the Appellate Authority confirming, setting aside or modifying an order in respect of valuation or assessment or liability to assessment or taxation shall be final; provided that it shall be lawful for the Appellate Authority, 5 [upon application made within three months from the date of its original order on its own motion, to review an order passed by it in appeal by a further order; provided further that no order shall be reviewed by the Appellate Authority on its own motion beyond three months from its date].

NOTE Municipal tax-Jurisdiction of Civil Courts- Where the Municipal Committee in levying a tax or committing an act, clearly acts outside or in abuse of its 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 153 powers under the Municipal Act, and explained that it is only in such cases, the bar to the jurisdiction of the Civil Court would not apply. 6 Formal defects in assessment and demands

165. Savings :-

No assessment list or other list, notice, bill or other such document specifying, or purporting to specify, with reference to any tax, charge, rent or fee, any person, property, thing or circumstance shall be invalid by reason only of a mistake in the name, residence, place of business or occupation of the person, or in the description

of the property, thing or circumstance, or by reason of any mere clerical error or defect of form, and it shall be sufficient that the person, property, thing or circumstance is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of a tax. 6 Munshi Ram v. Municipal Committee, (1979) 3 SCC 83.

CHAPTER 6

RECOVERY OF CERTAIN MUNICIPAL CLAIMS

166. Presentation Of Bill :-

- (1) As soon as a person becomes liable for the payment of, -
- (a) any sum on account of tax, other than 1 [any tax] payable upon immediate demand, or
 - (b) any sum payable under clause (c) of Section 196 or Section 229 of Section 230 in respect of the supply of water, or payable in respect of any other municipal service or undertaking, or
 - (c) any other sum declared by this Act or by rule 2 [or bye-law] to be recoverable in the manner provided by this chapter, the 3 [Municipality] shall, with all convenient speed cause a bill to be prescribed to the persons so liable.
- (2) Unless otherwise provided by rule, a person shall be deemed to become liable for the payment of every tax and licence fee upon the commencement of the period in respect of which such tax or fee is payable.

167. Contents Of Bill :-

Every such bill shall specify, -

- (a) the period for which, and the property, occupation, circumstances or thing in respect of which the sum is claimed, and
- (b) the liability or penalty enforceable in default of payment, and
- (c) the time (if any) within which an appeal may be referred as provided in Section 161.

168. Notice Of Demand :-

If the sum for which a bill has been presented as aforesaid is not paid into the municipal office or to a person empowered by a regulation to receive such payments, within fifteen days from the presentation thereof, the 1 [Municipality] may cause to be served upon the person liable for the payment of the said sum a notice of demand in the form set forth in Schedule IV, or to the like effect.

NOTE Demand - The word "demand" attracts the operation of Section 168. It may be readily conceded that the word "demand"

ordinarily means something more than what is due; it means something which has been demanded, called for or asked for. But the meaning of a word must take colour from the context in which it is used. In 1 Subs. by U.P. Act No. 9 of 1991. 2 Ins. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.155 clause (g) the context in which the word "demand" is used has a very obvious and clear reference to the amount of arrears or dues on which the disqualification depends; therefore, the expression used is - arrears in the payment of municipal tax or other dues in excess of one years demand. The word "demand" in that context and in the collocation of words in which it has been used can only mean in excess of one years municipal tax or other dues.

169. Issue Of Warrant :-

(1) If the person liable for the payment of the said sum does not, within fifteen days from the service of such notice of demand either, -

(a) pay the sum demanded in the notice, or

(b) show cause to the satisfaction of the 3 [Municipality] or of such officer as the 4 [Municipality] by regulation may appoint in this behalf, or, where there is an executive officer, of the executive officer, as the case may be, why he should not pay the same. such sum with all costs of the recovery may be recovered under a warrant caused to be issued by the 5 [Municipality] in the form of Schedule V, or to the like effect, by distress and sale of the movable property of the defaulter.

(2) Every warrant issued under this section shall be signed by the 6 [President] of the 7 [Municipality], or by an officer to whom the 8 [Municipality] has delegated its power by regulation or by the execution officer, if any.

170. Forcible Entry For Purpose Of Executing Warrant :-

(1) It shall be lawful for a municipal officer to whom a warrant issued under Section 169 is addressed, to break open, at any time between sunrise and sunset any outer or inner door or window of a building, in order to make the distress directed in the warrant, in the following circumstances and not otherwise,-

(a) if the warrant contains a special order authorizing him in this behalf, and

(b) if he has reasonable grounds for believing that the building

contains property which is liable to seizure under the warrant, and (c) if, after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance. 2 Mangoo Singh v. Election Tribunal, 1958 SCR 418, 423. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994.156 (2) Provided that such officer shall not enter or break open the door of an apartment appropriated for women, until he has given any women therein an opportunity to withdraw.

171. Manner Of Executing Warrant :-

(1) It shall also be lawful for such officer to distrain, wherever it may be found any movable property of the person therein named as defaulter, subject to the provisions of sub-section (2) and (3).

(2) The following property shall not be distrained -

(a) the necessary wearing apparel and bedding of the defaulter, his wife, and children;

(b) the tools of artisans;

(c) books of account;

(d) when the defaulter is an agriculturist, his implements of husbandry, seed grain, and such cattle as may be necessary to enable him to earn his livelihood.

(3) The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible equal in value to the amount recoverable under the warrant, and if any article have been distrained which, in the opinion of a person authorized by or under sub-section (2) of Section 169 to sign a warrant, should not have been so distrained, they shall forthwith be returned.

(4) The officer shall on seizing the property forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure a written notice in the form of Schedule VI that the said property will be sold as shall be specified in such notice.

172. Sale Of Goods Under Warrant, And Application Of Proceeds :-

(1) When the property seized is subject to speedy and natural decay or when the expense of keeping it in custody together with the amount to be recovered is likely to exceed its value, the 1 [President] or other officer by whom the warrant was signed, shall

at once give notice to the person in whose possession the property was seized to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

(2) If not sold at once under sub-section (1), the property seized, or a sufficient portion thereof, may, on the expiration of the time specified in the notice served by the officer executing the warrant, be sold by public auction under the orders of the 2 [Municipality], unless the warrant is suspended by the person who signed it or the sum due from the defaulter is paid together with all costs incidental to the notice, warrant and distress and detention of the property. 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994.157 (3) The surplus, if any, shall be forthwith credited to the municipal fund, notice of such credit being given at the same time to the person from whose possession the property was taken, but, if the same be claimed by written application to the 3 [Municipality] within one year from the date of the notice, a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the 4 [Municipality].

173. Procedure In Case Of Execution Against Property Outside [Municipal Area] :-

(1) If no sufficient movable property belonging to a defaulter of being upon the premises, in respect of which he is assessed, can be found within the 6 [municipal area], the District Magistrate may, on the application of the 7 [Municipality], issue his warrant to an officer of his Court, -

(a) for the distress and sale of any movable property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or

(b) for the distress and sale of any movable property belonging to the defaulter within the jurisdiction of any other Magistrate exercising jurisdiction within Uttar Pradesh.

(2) In the case of action being taken under clause (b) of sub-section (1), the other Magistrate shall endorse the warrant so issued, and cause it to be executed, and any amount recovered to be remitted to the Magistrate issuing the warrant, who shall remit the same to the 1 [Municipality].

173A. Recovery Of Taxes As Areas Of Land Revenue :-

(1) Where any sum is due on account of a tax, other than 3 [any tax] payable upon

immediate demand, from a person to a 4 [Municipality], the 5 [Municipality] may without prejudice to any other mode of recovery apply to the Collector to recover such sum together with costs of the proceedings as if it were an arrear of a land revenue.

(2) The Collector on being satisfied that the sum is due shall proceed to recover it is an arrear of land revenue.] 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 9 of 1991. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.158 NOTE Theka dues - Under Section 173-A of the U.P. Municipalities Act, it is provided that any sum due on account of tax, other than octroi or tax or any similar tax payable upon immediate demand, from a person to a board, the board may, recover as arrears of land revenue. In the instant case, the amount in question became due from the petitioner as a result of default in payment of Theka money between the parties. Similarly, Section 21 of the U.P. Town Areas Act provides that arrears of any tax imposed under this Act may be recovered and no other amount. Therefore, the provisions of Section 173-A of the U.P. Municipalities Act and Section 21 of the Town Areas Act are not attracted. The amount in question is not tax imposed under the aforesaid two Acts and as such the amount due from the petitioner could not be recovered as areas of land revenue.

174. Fees And Costs :-

Fees for, -

- (a) every notice issued under Section 168;
- (b) every distress made under Section 171; and
- (c) the costs of maintaining any live stock seized under the said section; shall be chargeable at the rates respectively specified in such behalf in rules made by the 7 [State Government], and shall be included in the costs of recovery to be levied under Section 169.

175. Savings :-

No distress or sale made under this Act shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any error, defect or want of form in the bill, notice, warrant of distress, inventory or other proceeding relating thereto.

176. Alternative Power Of Bringing Suit :-

Instead of proceeding by distress and sale, of in case of failure to realize thereby the whole or any part of the demand, the 1 [Municipality] may sue the person liable to pay the same in any Court of competent jurisdiction.

177. Liability Of Immovable Property For Taxes :-

All sums due on account of a tax imposed on the annual value of buildings or lands or of both shall, subject to the prior payment of the land revenue (if any) due to the Government thereupon, be a first charge upon such buildings or lands. 6 Titu Singh v. D.M./Collector, Mathura and others, (2003) 1 SAC 703. 7 Subs by ALO 1950. 1 Subs. by U.P. Act No. 12 of 1994.

CHAPTER 7

POWERS AND PENALTIES IN RESPECT OF BUILDINGS, PUBLIC DRAINS, STREETS, EXTINCTION OF FIRES, SCAVENGING AND WATER SUPPLY

178. Notice Of Intention To Erect Building Or Make Well :-

- (1) Before beginning, within the limits 2 [municipal area], -
- (a) to erect a new building or new part of a building, or
 - (b) to re-erect, or make a material alteration in a building, or
 - (c) to make or enlarge a well; a person shall give notice of his intention to the 3 [Municipality].
- (2) The notice referred to in sub-section (1) as required in the case of a building shall only be necessary where the building, abuts on, or is adjacent to, a public street or place, or property vested in Government, or in the 4 [Municipality], unless, by a bye-law applicable to the area in which the building is situated, the necessity of giving notice is extended to all buildings.
- (3) An alteration in a building shall, for the purposes of this chapter and of any bye-law, be deemed to be material, if, -
- (a) it affects or is likely to affect prejudicially the stability or safety of the building or the condition of the building in respect of drainage, ventilation, sanitation or hygiene, or
 - (b) it increases or diminishes the height of, area covered by or cubical capacity of the building or reduces the cubical capacity of any room in the building below the minimum prescribed in any bye-law, or
 - (c) it converts into a place for human habitation a building or part of a building originally constructed for other purposes, or
 - (d) it is an alteration declared by a bye-law made in this behalf to be a material alteration.

179. Plans And Specifications Required To Validate Notice :-

- (1) Where a byelaw has been made prescribing and requiring any information and plan in addition to a notice, no notice under Section 178 shall be considered to be valid until the 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.160 information, if any, required by such bye-law has been furnished to the satisfaction of the 1 [Municipality].
- (2) In any other case, the 2 [Municipality] may, within one week of the receipt of the notice required by Section 178, require a person who has given such notice to furnish a plan and specification of any

existing or proposed building, or part of a building, or well together with a site plan of the land, with such reasonable details as the 4 [Municipality] may prescribe in its requisition, and in such case, the notice shall not be considered to be valid until such plans and specification have been furnished to the satisfaction of the 4a [Municipality].

180. Sanction Of Work By [Municipality] :-

(1) Subject to the provisions of any bye-law the 6 [Municipality] may either refuse to sanction any work of which notice has been given under Section 178 or may sanction it absolutely or subject to,

-

(a) any written directions that the 7 [Municipality] deems fit to issue in respect of all or any of the matters mentioned in sub-head (h) of heading A of Section 298, or

(b) a written direction requiring the set-back of the building or part of a building to the regular line of the street prescribed under Section 222, or, in default of any regular line prescribed under that Section, to the line of frontage of any neighbouring building or buildings.

(2) In the case of refusal to sanction under sub-section (1), the 8 [Municipality] shall communicate in writing the reasons for such refusal to the person giving notice under Section 178.

(3) Should the 1 [Municipality] neglect or omit for one month after the receipt of a valid notice under Section 178 to make and deliver to the person who has given such notice an order of the nature specified in sub-section (1) in respect thereof, such person may by a written communication call the attention of the 2 [Municipality] to the omission of neglect, and, if such omission or neglect continues for a further period of fifteen days, the 3 [Municipality] shall be deemed to have sanctioned the proposed work absolutely. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 4 a Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994.161

(4) Provided that nothing in sub-section (3) shall be construed to authorize any person to act in contravention of this Act or of any bye-law. 4 [(5) No person shall commence any work of which notice has been given under Section 178 until sanction has been given or

deemed to have been given under this section.] 5 [(6) The 6 [Municipality] may within six months cancel or modify a sanction granted by it under sub-section (1) if it is found that the sanction was secured through fraud or misrepresentation and any work done thereunder shall be deemed to have been done without such sanction : Provided that before canceling or modifying any sanction, the 7 [Municipality] shall give a reasonable opportunity to the party concerned of being heard.] NOTE Approval and permission - Ordinarily, the difference between approval and permission is that in the first case the action holds good until it is disapproved, while in the other case it does not become effective until permission is obtained. But permission subsequently granted may validate the previous Act.

180A. Restriction On The Power Of A [Municipality] To Sanction Construction Of A Place Of Entertainment In Certain Cases :-

Notwithstanding anything contained in this Act, or any bye-law made thereunder, the construction of, or any addition to any building of public entertainment or any addition thereto, shall not, except with the previous approval of the State Government, be sanctioned by a 10 [Municipality], if the site of, or proposed for such building is,-

(a) within a radius of one furlong from -

(i) any residential institution attached to a recognized educational institution such a college, a high school or girls school, or

(ii) a public hospital with a large indoor patient ward, or

(iii) an orphanage containing one hundred or more inmates; or 4 Ins. by U.P. Act No. 2 of 1919. 5 Added by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd., 1995 Supp (3) SCC 456. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994.162

(b) In any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business purposes; or

(c) in any area reserved for residential purposes by any housing or planning scheme or otherwise under any enactment : Provided that no permission to construct any building intended to be used for cinematograph exhibition shall be given unless the 1 [Municipality] is satisfied that sanction to the plans and specifications have been obtained in accordance with the rules framed under the Cinematograph Act, 1918. 2 [* * *]

181. Duration Of Sanction :-

(1) A sanction given or deemed to have been given by a 3 [Municipality] under 4 [Section 180] shall be available for one year or for such lesser period as may be prescribed by bye-law 5 [unless it is extended by the 6 [Municipality] for a further period up to one year.]

(2) After the expiry of the said period the proposed work may not

be commenced except in pursuance of a fresh sanction applied for and granted under the 7 [same] section. NOTE A bare perusal of Section 181, sub-clause (2) shows that the validity of one year from the date of sanction of the map relates only to the commencement of the constructions and not its completion. There is no provision under the Act by which any construction which had started on the strength of sanctioned map under the Municipalities Act, fresh sanction was necessary on the enforcement of the Act.

182. Inspection Of Works Requiring Sanction :-

The 1 [President], the executive officer and if authorized n this behalf by resolution any other member, officer or servant of the 2 [Municipality] may, at any time and without warming inspect any work in respect of which notice is required under Section 178, -

(a) while under construction, or 1 Subs. by U.P. Act No. 12 of 1994. 2 Explanation omitted by U.P. Act No. 7 of 1953. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 1 of 1955. 5 Ins. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 1 of 1955. 8 Pradeep Kumar Pandey v. Sanyukta Sachiv, Uttar Pradesh Shashan, Avas Anubhag and others, (2003) 1 SAC 683. 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994.

(b) within one month of the receipt of a report that it has been completed or, in default of such report, any time after completion.

183. Compensation For Damage Sustained Through Order Passed Under Section 180 :-

Notwithstanding anything contained in Section 125, a person giving notice under Section 178, shall not be entitled to any compensation for damage or loss sustained by reason of an order passed by a 3 [Municipality] under Section 180, unless, -

(a) the order is passed on some ground other than the proposed work would contravene a bye-law or be prejudicial to the health or safety of the public or any person, or

(b) the order contains a direction of the nature specified in clause (b) or sub-section (1) of Section 180, or

(c) the order is an order of refusal to sanction the re-erection of a building on the ground that it is unsuitable in plan or design to the locality, or is intended for a purpose unsuitable to the locality, or contravenes a bye-law under sub-head (f) of heading A of Section 298.

184. Effect Of Sanction Under Section 180 :-

(1) A sanction given or deemed to have been given under Section 180 shall not, beyond exempting the person to whom the sanction is given or deemed to have been given from any penalty or consequence to which he would otherwise be liable under Sections 185, 186 or 222, confer or extinguish any right or disability, or operate as an estoppel or admission or affect any title to property or have any other legal effect whatsoever.

(2) In particular such sanction shall not operate to relive any person from the obligation imposed by Section 209 to obtain separate sanction for any structure referred to therein.

185. Illegal Erection Or Alteration Of A Building :-

Whoever begins, continues or completes the erection or re-erection of, or any material alteration in a building or part of a building or the construction or enlargement of a well, without giving the notice required by Section 178, or in contravention 4 [of the provisions of Section 180, sub-section (5) or], of an order of the 1 [Municipality] refusing sanction or any written directions made by the 2 [Municipality] under Section 180 or any bye-law, shall be liable upon conviction to a fine which may extend to 3 [one thousand rupees but which, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, shall not be less than two hundred and fifty rupees.] 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 2 of 1919. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1964.164

NOTES Deviation from sanctioned plan - The Corporation is the sole agency for granting licence for constructions within the Corporation area. If there is any deviations in the constructions from the sanctioned plan, the Corporation is entitled to condone and compound the lapses under the building bye-laws. Therefore it is for the Corporation to determine whether there is violation of the building bye-laws and deviation from the sanctioned plan. Further the Corporation has to decide whether the deviation could be condoned with composition in accordance with the building regulations. The aggrieved party can also report to the Corporation about the violation of the building bye-laws, if the Corporation does not respond legally, the party can invoke jurisdiction of Civil Court for appropriate reliefs against the violator and the Corporation as well. In such suit the Corporation is a necessary and a proper party. Without an opportunity to the Corporation in the matter and without considering the stand of the

Corporation, it is not proper for the Civil Court to adjudicate the matter. 4 Compounding of illegal constructions - Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantages suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviation ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Government should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.

186. Power Of [Municipality] To Stop Erection And To Demolish Building Erected :-

The 2 [Municipality] may at any time by written notice direct the owner or occupier of any land to stop the erection, re-erection or alteration of a building or part of a building or the construction or enlargement of a well thereon in any case where the 3 [Municipality] considers that such erection, re-erection, alteration, construction or enlargement is an offence under Section 185 and may, in like manner, direct the 4 Rohini Bai v. B.L. Rajashri and others, AIR 2005 Kant115. 5 Friends Colony Development Committee v. State of Orissa, (2004) 8 SCC 733. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 165 alteration or demolition as it deems necessary of the building, part of a building, or the well, as the case may be. NOTE Demolition-When permissible - The mere departure from the authorized plan or putting up a construction without sanction does not ipso facto and without more necessarily

and inevitably justify demolition of the structure. There are cases and cases of such unauthorized constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition. These are matters for the authorities to consider at the appropriate time having regard to nature of the transgressions. It is open to the petitioners to move the authorities for such relief as may be available to them at law. The petitioners may, if so advised, file a plan indicating the nature and extent of the unauthorized constructions carried out and seek regularization, if such regularization is permissible. The dismissal of the petitions will not stand in the way of the authorities examining and granting such relief as the petitioners may be entitled to under law. 4 Demolition of unauthorized constructions - This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out.

187. Establishment And Maintenance Of Fire-Brigade :-

The 6 [Municipality] may establish and maintain a fire-brigade and may provided any implements, machinery, or means or communicating intelligence which it thinks necessary for the prevention and extinction of fire.

188. Power Of Fire-Brigade And Other Persons For Suppression Of Fires :-

(1) On the occasion of a fire in a 1 [municipal area] any Magistrate, any member of the 2 [Municipality], the executive officer, the engineer or a secretary of the 3 [Municipality], or any member of the fire-brigade directing its operations and (if required so to do by a Magistrate, a member of the 4 [Municipality], the executive 4 Syed Muzaffar Ali v. Municipal Corpn. Of Delhi, 1995 Supp (4) SCC 426. 5 M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, (1999) 6 SCC 464. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.166 officer,

the engineer or a secretary of the 5 [Municipality]), any police officer above the rank of constable, may, -

(a) remove, or order the removal of, any person who by his presence interferes with or impedes the operations for extinguishing the fire or for saving life or property;

(b) close any street or passage in or near which a fire is burning;

(c) for the purpose of extinguishing the fire, break into or through or pull down, or cause to be broken into or through or pulled down or used for the passage of hoses or other appliances any premises;

(d) cause mains and pipes to be shut off as to give greater pressure of water in or near in place where the fire has occurred;

(e) call on the person in-charge of a fire-engine to render such assistance as may be possible; and

(f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for an act done by him under subsection (1) in good faith.

(3) Any damage done in the exercise of a power conferred for a duty imposed by this section shall be deemed to be damaged by the fire within the meaning of a policy of insurance against fire.

189. Construction Of Public Drains :-

(1) The 6 [Municipality] may construct, within, or, subject to the provisions of sub-section (2) of Section 120, outside the 7 [municipal area], such drain as it thinks necessary for keeping the 8 [municipal area] properly cleansed and drained and carry such drains through, across or under any street or place, and after reasonable notice in writing to the owner or occupier, into, through or under any buildings or land.

(2) Provided that no drain shall be constructed within the limits of a cantonment without the approval of the 1 [State Government] and otherwise than with the concurrence of the General Officer Commanding of the division in which such 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by ALO 1950. 167 cantonment is situate or, in the event of such concurrence being withheld, the previous sanction of the 2 [Central Government].

190. Alteration Of Public Drains :-

(1) The 3 [Municipality] may, from time to time, enlarge, lessen,

alter the course of, cover in or otherwise improve a public drain and may discontinue, close up or remove any such drain.

(2) The exercise of the power conferred by sub-section (1) shall be subject to the condition that 4 [Municipality] shall provide another and equally effective drain in place of any existing drain of the use of which any person is deprived by the exercise of the said power.

191. Use Of Public Drains By Private Owners :-

(1) The owner or occupier of a building or land within the 5 [municipal area] shall be entitled to cause his drains to empty into the drains of the 6 [Municipality], provided that he first obtains the written permission of the 7 [Municipality], and that he complies with such conditions consistent with any bye-law as the 8 [Municipality] prescribes as to the mode in which, and the superintendence under which the communications are to be made between drains not vested in the 9 [Municipality] and drains which are so vested.

(2) Whoever, without the written permission of the 10 [Municipality] or in contravention of any bye-law or of any direction or condition made or imposed under sub-section (1), makes or causes to be made or alters or causes to be altered, a connection of a drain belonging to himself or to some other person with a drain vested in the 11 [Municipality], shall be liable upon conviction to a fine which may extend to fifty rupees, and the 12 [Municipality] may by written notice require such person to close, demolish, alter, remake or otherwise deal with such connection as it deems fit.

192. Power Of [Municipality] To Enforce Drainage Connection With Public Drains :-

(1) When a building or land situated within one hundred feet of a public drain is at any time not drained to the satisfaction of the 2 [Municipality] by any or sufficient drainage connection with such drain the 3 [Municipality] may, by notice require the owner or occupier of such building or land to make and maintain a 2 Subs. by ALO 1950. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 168 drainage connection with the

drain in such manner as the 4 [Municipality], subject to the provisions of any bye-law directs.

(2) The provisions of Section 306 to 312 (inclusive) shall apply to default in compliance with any such requisition, notwithstanding that part of the land through which the said drainage connection is required to pass may not belong to the person so making default, unless he shall prove that the default was caused by the act of the owner or occupier of such last mentioned land, and he has made application to the 5 [Municipality] under Section 193.

193. Power Of Private Person To Carry A Drain Through The Land Of Another Person :-

(1) Any person desiring that an existing or proposed drain on his land shall be carried through or under the building or land, or connected with the drain, of another person owning a building or land abutting on, or a drain connected with a municipal drain may apply to the 6 [Municipality].

(2) The 7 [Municipality] on receiving an application under sub-section (1) may call upon the other person to show cause, within specified period, why the applicant's drain should not be carried through or under his building or land or connected with his drain.

(3) The 8 [Municipality] shall hear any objection made by such person if submitted within the specified period, and thereafter, if it considers that the drain or drainage connection shall be made, shall record an order to this effect.

(4) The order shall set out in writing, -

(a) the period within which the parties shall come to an agreement as to the construction of the drain or drainage connection;

(b) the period within which the drain or drainage connection shall be made;

(c) The respective responsibilities on the parties concerned for the maintenance, repair and cleansing of the drain or drainage connection when made; and

(d) the sum (if any) payable, whether in the form of rent or otherwise, by the person making the application to the owner of the land, building or drain, as the case may be.

(5) If the sum awarded under clause (d) of sub-section (4) takes the form of a lump payment, the 1 [Municipality] may recover it in the manner provided by Chapter 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P.

Act No. 12 of 1994.169 VI and pay any sum recovered to the person to whom it is due. If a rent has been awarded, the person to whom it is due may recover it by suit in any civil court having jurisdiction.

(6) If the parties concerned fail to agree within the period specified in the order, or if the drain or drainage connection is not constructed within the period specified for its construction, the 2 [Municipality] may itself construct it and may recover the cost from the applicant in the manner provided by Chapter VI.

194. Right Of Owner To Divert Drain On His Land :-

The owner of any land into, through or under which a drain has been carried under the provisions of the preceding section may, at any time, with the written permission of the 3 [Municipality] and subject to such condition as the 4 [Municipality] impose, divert the drain at his own expense.

195. Definition Of House-Scavenging :-

House-scavenging means the removal of filth, rubbish, odour or other offensive matter from the dust-bin, privy, cesspool or other receptacle for such matter in or pertaining to a house or a building.

196. Adoption And Relinquishment By [Municipality] Of Housescavenging, Etc :-

Subject to the provisions hereinafter contained with respect to the rights of customary sweepers and of agriculturists, the 6 [Municipality] may, -

(a) by public notice, undertake the house-scavenging of any houses or buildings or the 7 [collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools] in the 1 [municipal area] from a date not less than two months after issue of the notice.

(b) after giving, by public notice or otherwise not less than two months notice to the parties concerned, relinquish an undertaking under clause (a);

(c) on the application or with the consent of the occupier, at any time undertake the house-scavenging of a house or building or the 2 [collection, removal and disposal of excrementitious and 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 26 of 1964.170

polluted matter from privies, urinals and cesspools] in any building or on any land or the removal of other offensive matter or rubbish from a building or land, on terms to be fixed by byelaw in this behalf; and

(d) after giving not less than two months notice to the occupier, relinquish an undertaking under clause (c).

197. Objections To Adoption :-

(1) The occupier of a house or building affected by a notice issued under clause (a) of Section 196 may at any time after the issue thereof, apply to the 3 [Municipality] to exclude that house or building from the notice.

(2) The 4 [Municipality] shall consider and pass orders upon such application within six weeks of the receipt thereof, and may by such order exclude such house or building from the notice.

(3) In deciding whether to exclude a house or building from the notice, the 5 [Municipality] shall consider, among other matters, the efficiency of the arrangements for house-scavenging made by the occupier.

198. Continuance Of House-Scavenging Once Adopted By [Municipality] :-

When the 7 [Municipality] has undertaken the house-scavenging of a house or building under Section 196, it may continue to perform such house-scavenging with or without the consent of the occupier for the time being of such house or building.

199. Powers Of Municipal Servants For House-Scavenging :-

The servants of the 8 [Municipality] employed in house-scavenging may, at all reasonable times, do all things necessary for the proper performance of any house-scavenging undertaken by the 1 [Municipality].

200. Savings In Favour Of Customary Sweepers And Of Agriculturists :-

Notwithstanding anything in Section 196, the 2 [Municipality] shall not, except in accordance with the provisions of Section 201 and 202, -

(a) undertake the house-scavenging of a house or building in respect whereof a sweeper has a customary right to do such house-scavenging without the consent of the sweeper; or 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7

Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.171

(b) undertake the house-scavenging of a house or building occupied by an agriculturist who himself cultivates a land within 3 [municipal area] or in village coterminous therewith without the consent of the occupier.

201. Punishment Of Customary Sweepers For Negligence :-

(1) Should a sweeper who has a customary right to do the house-scavenging of a house or building (hereinafter called the customary sweeper) fail to perform such house-scavenging in a proper way the occupier of the house or building or the 4 [Municipality] may complain to a Magistrate.

(2) The Magistrate receiving such complaint shall hold an enquiry, and, should it appear to him that the customary sweeper has failed to perform the housescavenging of the house or building in a proper way or at reasonable intervals, he may impose upon such sweeper a fine which may extend to ten rupees, and upon a second or any later conviction in regard to the same house or building may also direct the right of the customary sweeper to do the house-scavenging of the house or building to be forfeited, and thereupon such right shall be forfeited 5 [:] 6 [Provided that the Magistrate may at any state during the pendency of the case under this subsection authorize the 7 [Municipality] to undertake the housescavenging of such house or building till final orders in the case are passed by him.]

202. Procedure In Case Of Default By Agriculturists :-

(1) Should an agriculturist who himself cultivates land within 8 [municipal area] or in a village coterminous therewith fail to provide for the proper house-scavenging of a house or building occupied by him, the 9 [Municipality] may complain to a Magistrate.

(2) The Magistrate receiving the complain shall hold an inquiry and should it appear to him that the agriculturist has not provided for the proper house-scavenging of the house or building, he may pass an order empowering the 1 [Municipality] to undertake the same, and thereupon the 2 [Municipality] shall be entitled to undertake such house-scavenging. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12

of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.

203. Provisions Of Laying Out And Making A Street Before The Construction Of A Building On A Site Which Does Not Abut A Public Or Private Street :-

Except where a site abuts a public or private street, if any person owning or possessing any land not hitherto used for building purposes intends to utilize, sell, lease or otherwise transfer such land or any portion thereof as site for the construction of a building, he shall, before utilizing, selling, letting or otherwise transferring such site, lay out and make a street which shall connect such site with an existing public or private street]. NOTE Norms for disposal of public property - In normal circumstances when any public property is to be disposed of by a public body or a statutory body, the opportunity is required to be given to all interested persons similarly situated and, in any case, the attempt must be made to procure maximum price. As such, the action on the part of the Municipality of allotment of the shops by private negotiation cannot be said to be in consonance with the settled norms for disposal of the public property.

204. Permission To Lay Out And Make A Street :-

(1) Every person before beginning to lay out or make a new private street shall submit an application in writing to the 6 [Municipality] seeking permission to lay out or make such street and shall, alongwith such application, submit plans showing the following particulars, -

(a) the proposed level, direction and width of the street;
(b) the street alignment and the building line and shall also state in the application the arrangements to be made for the levelling, paving, metalling, flagging, channeling, sewerage, draining, conserving and lighting of the street.

(2) The provisions of this Act and of any rules or bye-laws made there-under as to the level and width of a public street and the height of a building abutting thereon shall apply to the case of a street referred to in sub-section (1), and all other particulars referred to in that sub-section shall be subject to the approval of the 1 [Municipality].

(3) Within 60 days after the receipt of an application under sub-section (1) the 2 [Municipality] shall either sanction the laying out

or the making of the street on such 3 Subs. by U.P. Act No. 7 of 1949. 4 Chhaganbhai Kalubhai Mali and others v. State of Gujarat and others, AIR 2005 Guj 306. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 173 conditions as it may think fit to impose or disallow it, or ask for further information with respect to it within a specified reasonable period.

(4) Such sanction may be refused, -

(i) if the proposed street would conflict with any arrangements which have been made or which are in the opinion of the 3 [Municipality], likely to be made for carrying out any general scheme of street improvement, or

(ii) if the proposed street does not conform to the provisions of the Act, rules and bye-laws referred to in sub-section (2), or

(iii) if the proposed street is not designed so as to connect at least at one end with a public or a private street which is already connected with a public street.

(5) No person shall lay out or make any new private street or load without, or otherwise than in conformity with the orders of the 4 [Municipality]. If further information is asked for under sub-section (3) the laying out or making of the street shall not be commenced until orders have been passed on the application after receipt of such information : Provided that the passing of such order shall not in any case be delayed by more than 30 days after the 5 [Municipality] has received all the informations which it considers necessary for the final disposal of the application.]

205. Sanction Of The [Municipality] To Be Presumed For Laying Out And Making Of A Street In Certain Cases :-

Should the 8 [Municipality] neglect or omit for 60 days after the receipt of an application under sub-section (1) of Section 204 or if an order has been issued under sub-section (3) asking for further information, fail within a period specified in such order to deliver to the person who has submitted the application, particulars of the information required by the 9 [Municipality], such person may, by a written communication, call the attention of the 10 [Municipality] to the omission, neglect or failure, and if such omission, neglect or failure continues for a further period of 30 days, the 1 [Municipality] shall be deemed to have sanctioned the laying out and making of the proposed street absolutely : Provided that nothing contained herein shall be construed to authorize any person to act in contravention of any provisions of the Act or any

bye-laws.] 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

206. Duration Of Sanction :-

(1) A sanction given or deemed to have been given by a 2 [Municipality] under 3 [Section 204 and 205] shall be available for one year.

(2) After the expiry of the said period the proposed street may not be commenced except in pursuance of a further sanction applied for and granted under the foregoing sections.

207. Illegal Making Of A Street :-

Whoever begins, continues or completes the laying out or making of a street without giving the notice required by Section 4 [204] or in contravention of any written directions made by the 5 [Municipality] under Section 205 or any bye-law or any provision of this Act shall be liable upon conviction to a fine which may extend to five hundred rupees.

208. Power Of [Municipality] To Alter Unsanctioned Street And Demolish The Same :-

7 [(1) If any person lays out or makes any street referred to in Section 204, without or otherwise than in conformity with the orders of the 8 [Municipality], the 9 [Municipality] may, notwithstanding any prosecution which may have been started against the offender under this Act, by notice in writing, -

(a) require the offender to show sufficient cause by a written statement signed by him and sent to the 10 [Municipality] on or before such date as may be specified in the notice, why such street should not be altered to the satisfaction of the 11 [Municipality], or if such alteration be impracticable, why such street should not be demolished, or

(b) require the offender to appear before the 12 [Municipality] either personally or by a duly authorized agent, on such day of such time and place as may be specified in the notice, and show cause as aforesaid.

(2) If any person on whom such notice is served fails to show sufficient cause to the satisfaction of the 1 [Municipality], the 2

[Municipality] may pass such order directing the alteration or demolition of the street as it thinks fit.] 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 7 of 1949. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

209. Sanction Of [Municipality] To Projections Over Streets And Drains :-

(1) Subject to any rules made by the 4 [State Government] prescribing the conditions for the sanction by a 5 [Municipality] of projections over streets or drains, a 6 [Municipality] may give written permission, where provision is made by a bye-law for the giving of such permission, -

(a) to the owners or occupiers of buildings in or on streets to erect or re-erect open verandahs, balconies, or rooms, to project over the street from any upper storey thereof, at such height from the surface of the street, and to such an extent beyond the line of the plinth or basement wall as are prescribed in such bye-laws; and

(b) to the owner or occupier of any building or land to erect or land to erect or re-erect any projection or structure so as to overhang, project into, or encroach on or over a drain in a street to such an extend, and in accordance with such conditions, as are in like manner prescribed.

(2) In giving permission, under clause (a) of sub-section (1), a 7 [Municipality] may prescribed the extent to which, and the conditions under which, any roofs, caves, weather-boards, shop-boards and the like may be allowed to project over such streets.

210. Penalty For Construction Of Projections Over Streets Or Drains Without Permission :-

Any person erecting or re-erecting any such projection or structure as it referred to in Section 209 without the permission thereby required or in contravention of any permission given thereunder shall be liable for conviction to a fine which may extend to 8 [one thousand rupees and in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court shall not be less than two hundred an fifty rupees.]

211. Power To Remove Encroachments And Projections Over Streets And Drains :-

The 1 [Municipality] may, by notice, require the owner or occupier of a building to remove, or to alter a projection or structure overhanging, projecting into or encroaching on a street, or into, on or over any drain, sewer or aqueduct therein : Provided that in the case of any such projection or structure lawfully in existence on or before the tenth day of March 1900, the 2 [Municipality] shall made 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs by ALO 1950. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 176 compensation for any damage caused by the removal or alteration, which shall not exceed ten times the cost of erection and demolition.

212. Power To Require Levelling, Paving Etc. Of A Street :-

(1) If any private street or part thereof is not levelled, paved, metalled, flagged, channelled, sewerred, drained, conserved, or lighted to the satisfaction of the 4 [Municipality], the 5 [Municipality] may by notice require the owners or occupiers of premises 6 [or lands], fronting, or abutting such street or part thereof to carry out any work which in its opinion may be necessary and within such time as may be specified in such notice.

(2) If such work is not carried out within the time specified in the notice, the 7 [Municipality] may, if it thinks fit, execute it and the expenses incurred shall be recovered from the owner or occupiers in default under Chapter VI according to the frontage of their respective premises 8 [or lands] and in such proportion as may be settled by the 9 [Municipality].

(3) If any street has been levelled, paved, metalled, flagged, channelled, drained, conserved and lighted under the provisions of the preceding sub-sections, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street.

212A. Power Of The [Municipality] To Control And Regulate The Construction Of Any Building Or Street And Drains Beyond [Municipal Area] :-

12 [Notwithstanding anything contained elsewhere in this Act, a 13 [Municipality] may subject to such conditions and limitations as may be prescribed, control and regulate under this Chapter the construction of any building, street or drain,

beyond the 1 [limits of municipal area] up to a distance of five miles.

213. Power To Require The Protection Of Streets During Erection Of Buildings, Etc :-

(1) No person shall cut down any tree or cut off a branch of any tree, or erect or re-erect or demolish any building or part of to building, or alter or repair the outside of any building where such action is of a nature because obstruction, 3 Subs. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 26 of 1964. 13 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.177 danger or annoyance or risk of obstruction, danger or annoyance to any person using a street, without the previous permission in writing of the 2 [Municipality].

(2) The 3 [Municipality] may at any time by notice require that any person doing or proposing to do any of the act referred to in sub-section (1) shall refrain from beginning or continuing the act unless he puts up, maintains, and provides from sunset to sunrise with sufficient lighting such hoardings or screens as are specified or described in the notice, and may further at any time by notice required the removal, within a time to be specified in the notice, of any screen or hoarding erecting in anticipation or in pursuance of any of the said acts.

(3) Whoever contravenes the provisions of sub-section (1) shall be liable on conviction to a fine which may extend to 4 [five hundred] rupees and to a further fine which may extend to 5 [ten] rupees for every day on which contravention continues after the date of the first conviction.

214. Power To Require Trimming Of Hedges And Trees :-

The [Municipality] may, by notice, require the owner or occupier of any land to cut or trim the hedges growing thereon and bordering on a street, or any branches of trees growing thereon which overhang a street and obstruct the same or cause danger.

215. Power To Remove Accidental Obstruction :-

When a private house, wall or other erection or anything fixed thereto or a tree shall fall down and obstruct a public drain and encumber a street, the 7 [Municipality] may remove such

obstruction or encumbrance at the expense of the owner of the same and may recover such expense in the manner provided by Chapter VI, or may, by notice, require the owner to remove the same within a time to be specified in the notice.

216. Regulation Of Troughs And Drain Water Pipes Affecting A Street :-

The [Municipality] may, by notice, require the owner or occupier of any building or land abutting on a street to put up and keep in good condition proper troughs and pipes for receiving and carrying off the water from the building or land, and for discharging the same in such manner as the 1 [Municipality] may think fit, so as not to inconvenience persons passing along the street.

217. Naming Of Streets And Numbering Of Buildings :-

(1) The 2 [Municipality] may,- 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.

(a) 3 [with the prior approval of the Prescribed Authority] cause a name or a new name to be given to a street; and

(b) cause the name or a new name to be affixed to or marked on any building in such position as it thinks fit; or

(c) required by a written notice the owner or occupier of any building to affix thereto a number plate or new number plate to a pattern approved by the 4 [Municipality] or itself cause a number or a new number to be affixed to or marked on any building.

(2) Any person destroying, pulling down, defacing or altering any name or number or number plate affixed to or marked on a building under sub-section (1) or affixing to or marking on a building a different name or number from that affixed or marked by or under the order of the 5 [Municipality] shall be liable on conviction to a fine which may extend to 6 [two hundred and fifty] rupees.

218. Power To Attach Brackets To Buildings, Etc :-

(1) The 7 [Municipality] may erect upon any premises, or attach to the outside of any building or to any tree, -

(a) posts, brackets or other supports for oil, gas, electric or other

lamps;

(b) posts, brackets or other supports for telegraph wires, telephone wires or wires conducting electricity for locomotive purposes; or

(c) shafts or pipes deemed necessary for the proper ventilation of drains and water-works.

(2) Provided that the erection or attachment of such supports, shafts and pipes shall not be effected in a manner to occasion injury or inconvenience and shall be subject, so far as may be, to any provisions of the Indian Telegraph Act, 1885, applying to the attachment, removal or alteration of a telegraph line or posts.

Public streets

219. Power To Construct, Improve And Provide Sites On Public Streets :-

A 1 [Municipality] may, - 3 Ins. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

(a) lay out and make a new public street and construct tunnels and other works subsidiary to the same; and

(b) widen, lengthen, extend, enlarge or otherwise improve any existing public street if vested in the 2 [Municipality]; and

(c) turn, divert, discontinue or close any public street so vested; and

(d) provide within its discretion building sites of such dimensions as it thinks fit to abut on or adjoin any public street made, widened, lengthened, extended, enlarged or improved by the 3 [Municipality] under clauses (a), (b) and (c) or by the State Government; and

(e) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the 4 [Municipality], acquire any land alongwith the buildings thereon, which it considers necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred by the preceding clauses; and

(f) subject to the provisions of any rule prescribing the conditions on which property vested in the 5 [Municipality] may be transferred, lease, sell or otherwise dispose of any property acquired by the 6 [Municipality] under clause (e) or any and used by the 7 [Municipality] for a public street and no longer required therefore, and in doing so impose any conditions as to the removal of any building existing thereon, as to the description of any new

building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that it deems fit. NOTES Road - The Supreme Court in the case of Municipal Board Manglam v. Mahadeoji Maharaj, 8 has discussed the right of Municipal Board in respect of the roadside land whether included in the road. After discussing the law at great length with regard to the expression "road" it has been held that the side lands are ordinarily included on the road, for they are necessary for the proper maintenance of the road. In the case of pathway used for a long time by the public, it has topographical and permanent landmarks and the manner and mode of its maintenance usually indicate existence of user. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 AIR 1965 SC 1147. 180 Public street - The user of the property is and always shall be with the public. Any space, passage, verandah, alley, road or footway dedicated to public by the owner for passing and repassing, partakes the character of a "street" and no longer remains under the control of the owner. The owner has no right at all times to prevent the public from using the same. When the owner of the property has, by his own volition permitted his property to be converted into a "street", then he has no right to claim any compensation when the same property is made a "public street". The "street" are meant for public use. It is necessary that the "street" which are being used by the public are frequently repaired and are also saved from public abuse. It is common knowledge that in the absence of any regulatory control the hawkers and squatters are likely to occupy the "streets" thereby creating nuisance for the public.

220. Use Of Public Streets By Vendors And Other Persons :-

Notwithstanding any right or privilege (previously) acquired, accrued, or enjoyed in a 2 [municipal area] for which bye-laws under sub-head (b) of heading E of Section 298 have been made and are in force, no itinerant vendor, or any other person, shall be entitled to use or occupy any public street or place for the sale of articles or for the exercise of any calling or for the setting up of any booth or stall without the permission of the 3 [Municipality] given in accordance with such bye-laws.

221. Adoption Of A Street As A Public Street :-

(1) A 5 [Municipality] may at any time, and shall, when required by

a requisition under sub-section (3) of Section 212 by public notice posted up in a street, that is not a public street, or in part of such street, give intimation of intention to declare the same a public street. Within two months next after such notice has been so posted up the owner or owners of such street such part of a street, or of a greater portion thereof, may lodge objections at the municipal official against the notice. The 6 [Municipality] shall consider the objections lodged, and if it rejects them, may, by further public notice posted up in such street or such part, declare the same to be a public street.]

(2) Any public notice required under sub-section (1) shall, in addition to being posted up in the street, be published in a local paper (if any) or in such other manner as the [Municipality] thinks fit.

222. Power To Regulate Line Of Buildings On Public Streets

:-

(1) Whenever the 1 [Municipality] considers it expedient to define the general line of buildings on each or either side of any existing or proposed public street, it shall give public notice of its intention to do so. 1 Kashmiri Lal and others, etc. v. NDMC and another, AIR 2005 Del 236. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 7 of 1949. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

(2) Every such notice shall specify a period within which objections will be received.

(3) The 2 [Municipality] shall consider all objections received within the specified period and may then pass a resolution defining the said line, and the line so defined shall be called "the regular line of the street"

(4) Thereafter it shall not be lawful for any person to erect, re-erect or alter a building or part of a building so as to project beyond the regular line of the street, unless he is authorized to do so by a sanction granted under Section 180 or by a permission in writing (and the 3 [Municipality] is hereby empowered to grant such permission) under this section.

(5) Any owner of land who prevented by the provisions of this section from erecting, re-erecting or altering any building on any land may require the 4 [Municipality] to make compensation for any damage which he may sustain by reason of such prevention,

and upon the payment of compensation in respect of any land situated within the regular line of the street such land shall vest in the 5 [Municipality].

(6) The 6 [Municipality] may, by notice, require the alteration or demolition of any building or part of a building erected, re-erected or altered in contravention of sub-section (4).

223. Duties Of [Municipality] When Constructing Public Streets, Etc :-

(1) The 8 [Municipality] shall, during the construction or repair of a public street or of any water-works, drains or premises vested in it, or whenever any public street, waterworks, drains or premises vested in it have, for want of repair or otherwise become unsafe for use by the public, take all necessary precautions against accident by, -

(a) shoring up and protecting adjacent buildings; and

(b) fixing bars, chains or posts across or in any street for the purpose of preventing or diverting traffic during such construction or repair; and

(c) guarding and providing with sufficient lighting from sunset to sunrise any work in progress. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994.182 (2) Whoever, without the authority or consent of the 1 [Municipality] in any way interferes with any arrangement or construction made by the 2 [Municipality] under sub-section (1) or guarding against accident shall be liable on conviction to a fine which may extend to fifty rupees.

224. Power Of [Municipality] To Construct And Alter Water-Works :-

The [Municipality] may, -

(a) construct water-works within or, subject to the provision of sub-section (2) of Section 120, outside the 4 [municipal area], and may carry such works through, across, over or under any street or place, and after reasonable notice in writing to the owner or occupier, into, through, over or under any buildings or land;

(b) from time to time enlarge, lessen, alter the course of, cover in or otherwise improve any water-works and discontinue, close up or remove the same;

(c) with the previous sanction of the State Government, grant to

any person or company a licence to supply water within 5 [municipal area] and for this purpose to lay down mains and pipes, construct water-works and do all other necessary acts or things; and

(d) with the same sanction, transfer all or any part of it existing water-works to the management of such licensee : Provided that such sanction shall not be given unless the State Government is satisfied that it will be in the best interest of the public concerned.

224A. Powers And Liabilities Of Licensee :-

(1) When a licence is granted under clause (c) of Section 224, the rate at which, the manner in which, and the person by whom, payments shall be made to the licensee for water supplied by him and the terms and conditions on which the licensee may grant water connections to the consumers shall be settled between the 1 [Municipality] and the licensee and entered in the licence, and the 2 [Municipality] may delegate to the licensee any of the powers conferred on it by this Act or rules relating to water-works and water-supply : 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.183 Provided that the power of assessment of water-tax and of its recovery otherwise than by a civil suit shall not be delegated to the licensee.

(2) Such licensee with the previous sanction of the 3 [Municipality] may exercise the powers conferred on the 4 [Municipality] by Section 225 and 227 of this Act.

224B. Revocation Of Existing Licenses :-

Every licence granted under clause (c) of Section 224 shall, if not already revoked, stand revoked with effect from June 13, 1975.]

224C. Provisions Where Licence Of A Licensee Is Revoked :-

(1) Where the licence of a licensee is revoked under Section 224-B as it stood immediately before the commencement of the U.P. Municipalities (Amendment) Act, 1975, or where such licence stands revoked by virtue of the new Section 224-B as substituted by the said Act, all the property pertaining to the water-works (namely, all existing water supply services, including all plants, machinery, water-works, pumping sets, filter beds, water mains and pipes laid down along, over or under any public street, and all buildings and other works, materials, stores and things appurtenant thereto) belonging to or vested in the licensee immediately before the date of revocation of the licence (hereinafter in this section referred to as the said date) shall as from the said date vest in and stand transferred to the 7 [Municipality] free from any debt, mortgage or similar obligation of the licensee attached to such property : Provided that any such debt, mortgage or similar obligation shall attach to the amount referred to in sub-section (2) in substitution for such property.

(2) Where any property belonging to the licensee vests in the 8 [Municipality] under sub-section (1), not being water-works of which only the management was transferred to him by the 9 [Municipality] under clause (d) of Section 224 the 10 [Municipality] shall pay to such licensee an amount determined as hereinafter provided in this section : Provided that the licensee shall, in addition to the said amount, be paid interest thereon on the Reserve Bank rate ruling on the said date plus one percentum for the period from the said date to the date of payment of the

said amount.

(3) The State Government shall appoint, by order in writing, a person having adequate knowledge and experience in matters relating to accounts, to be Special 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 45 of 1975. 6 Subs. by U.P. Act No. 45 of 1975. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994.184 Officer to assess any amount payable under this section to the licensee after making the deductions mentioned in this section.

(4) (a) The Special Officer may call for the assistance of such officers and staff of the State Government in the Local Self-Government Engineering Department or of the licensee as he may deem fit for assessing the net amount payable.

(b) The Special Officer shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters :

(i) enforcing the attendance of any person and examining him on oath;

(ii) compelling the production of documents; and

(iii) issuing commissions for the examination of witnesses. The Special Officer shall also have such further powers as may be specified by the State Government by notification in the Gazette.

(5) The gross amount payable to such licensee shall be the aggregate value of the amounts specified below,-

(i) the book value of all completed works in beneficial use pertaining to the water-works and taken over by the 1 [Municipality] (excluding works paid for by the consumers), less depreciation calculated in accordance with the Table appended to this section;

(ii) the book value of works in progress taken over, excluding works paid for by the consumers or prospective consumers;

(iii) the book value of all stores, including spare parts taken over and in the case of used stores and spare parts, if taken over, such sum as may be decided upon by the Special Officer;

(iv) the book value of all other fixed assets in use on the said date and taken over, less depreciation calculated in accordance with the said Table;

(v) the book value of all plants and equipments existing on the said date, if taken over, but no longer in use owing to wear and tear or to obsolescence, to the extent such value has not been written off in accordance with the said Table. 1 Subs. by U.P. Act No. 12 of 1994.185 Explanation - The book value of any fixed asset means its original cost, and shall comprise, -

(i) the purchase price paid by the licensee for the assets, including the cost of delivery and all charges properly incurred in erecting and bringing the assets into beneficial use, as shown in the books of the licensee;

(ii) the cost of supervision actually incurred, but not exceeding fifteen percent of the amount referred to in paragraph

(i) : Provided that before deciding the amount under this sub-section, the licensee shall be given an opportunity by the Special Officer of being heard, after giving him a notice of at least 15 days therefore.

(6) The 1 [Municipality] shall be entitled to deduct the following sums from the gross amount payable under sub-section (5) to the licensee, -

(a) all amounts and arrears of interest, if any, thereon, due from the licensee to the 2 [Municipality];

(b) all amounts and arrears of interest, if any, thereon, due to the State Government or the State Electricity Board;

(c) any amount of wages, bonus, gratuity, provident fund or other payments due to remaining unpaid on the said date to persons employed as workmen (within the meaning of the U.P. Industrial Disputes Act, 1947), in connection with the waterworks;

(d) any amount which licensee may have failed to pay in respect of either his contribution or the employees contribution realized by him or any other dues recoverable from licensee under the Employees Provident Fund Act, 1952 or the

Employees State Insurance Act, 1948 in respect of persons employed in connection with the water-works.

(7) The liability of the licensee towards the State Government or the State Electricity Board or towards his employees, as the case may be, to the extent of deduction made under sub-section (7) shall stand discharged. Upon any such deduction being made the 3 [Municipality] shall to that extent be liable to make payment to the State Government, the State Electricity Board or the workmen, as the case may be. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994.

(8) Where the gross amount payable to the licensee is equal to or less than the amount to be deducted under this section no payment shall be made to the licensee by the 1 [Municipality].

(9) The amount, if any, payable by the 2 [Municipality] to the licensee shall be as determined by the Special Officer under sub-sections (5), (6) and (8) and nothing in Section 324 shall be construed to apply in relation to the determination of the amount payable by the 3 [Municipality] under this section. Table of depreciation based on the period of life expectancy of various assets There shall be deducted for each year in respect of fixed assets employed in the licensees undertaking such an amount as would, if set aside annually throughout the period specified in the following table and accumulated at compound interest at four per cent per annum, produce at the end of the said period an amount equal to ninety per cent of the original cost of the asset after taking into account the sums already written off or set aside in the books of licensee : Column 1 Description of assets Column 2 Number of years or period A. Land owned under full title Infinite B. Land held under lease The period of the lease or the period remaining unexpired on the assignment of the lease. C. Assets purchased now, -

(a) building and Civil Engineering works of a permanent character not mentioned above -

(i) Offices Fifty

(ii) Temporary erections such as wooden structures. Five

(iii) Roads other than Kachcha Roads. One hundred 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 187

(iv) Others Fifty

(b) Self-propelled vehicles Seven

(c) (i) Office furniture and fittings Twenty

(ii) Office equipment Ten D. Assets purchased second hand and assets not otherwise proposed for in this Table. Such reasonable period as the Special Officer determines in each case having regard to the nature, age and condition of the asset at the time of its acquisition by it.]

225. Power To Require Private Water-Course, Etc. To Be Cleaned Or Closed :-

(1) The 1 [Municipality] may, by notice, require the owner of, or the person having control over a private water-course, spring, tank, well or other place, the water of which is used for drinking, to keep and maintain the same in good repair and to clean the same, from time to time, of silt, refuse or decaying vegetation and may also require him to protect the same for pollution in such manner as the 2 [Municipality] may think fit.

(2) When the water of any such water-course, spring, tank, well or other place is proved to the satisfaction of the 3 [Municipality] to be unfit for drinking, the 4 [Municipality] may, by notice, require the owner, or person having control thereof to desist from so using

such water or permitting others to so use it, and if, after such notice such water is used by any person for drinking, the 5 [Municipality] may, by notice, require the owner or person having control thereof to close such well either temporarily or permanently, or to enclose or fence such water-course, spring, tank, well or other place in such manner as it may direct, so that the water thereof may not be so used.

226. Emergent Powers On Outbreak Of Epidemic :-

In the event of a 6 [municipal area], or any part thereof, being visited with an outbreak of cholera or other infectious disease notified in this behalf by the State Government, the 1 [President] of the 2 [Municipality] or any person authorized by him in this behalf, may, during the continuance of the epidemic, without notice and at any time, inspect 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994.188 and disinfect any well, tank or other place from which water is, or is likely to be, taken for the purpose of drinking, and may further, take such steps as he deems fit to prevent the removal of water therefrom.

227. Removal Of Latrines, Etc. Near Any Source Of Water Supply :-

The [Municipality] may, by notice require an owner or occupier on whose land a drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse exists within fifty feet of a spring, well, tank, reservoir or other source from which water is, or may be, derived for public use, to remove or close the same within one week from the service of such notice.

228. Obligation Of [Municipality] Imposing Water-Tax :-

(1) 5 [Every municipality] in which a water-tax is imposed, shall be bound, -

(a) throughout a prescribed area or prescribed areas -

(i) to maintain a system of water-supply through pipes, and

(ii) to lay on water at prescribed pressure and during prescribed hours, and

(iii) to supply in all the chief streets in which mains have been laid, water to stand-pipes or pumps situated at such intervals as are

prescribed; and

(b) 6 [subject to the rules as may be framed] to allow the owner or occupier of any building or land assessed to a prescribed minimum water-tax to connect for the purpose of obtaining water for domestic purposes, the building or land with a main by means of a communication pipe of the prescribed size and description; and

(c) to supply, within every twenty-four hour, to every owner or occupier entitled to a house connection under clause (b) whose land or building is provided therewith such amount of water as is prescribed with reference to the water-tax payable by him and his estimated requirements for domestic purposes, into a storage cistern erected in or on the building or land, of a capacity not less than such amount and of a prescribed pattern and at an altitude not exceeding the maximum prescribed for the same.

(2) The word "prescribed" in sub-section (1) means prescribed by rule under Section 235. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949.

229. Supply Of Water By Agreement :-

Every 1 [Municipality] may by agreement supply any owner or occupier of land with any water that he may require for any purpose for such remuneration, consistent with any rate or rates prescribed by rule, and on such terms and conditions, consistent with this Act and with any rule, as are agreed on between the 2 [Municipality] and such owner or occupier.

230. Charges For Water Supply :-

(1) When any building or land is connected with a main, the 3 [Municipality] may, so far as is consistent with any agreement made under Section 229, charge the owner, lessor, or occupier, whichever is prescribed by rule, for all water consumed at the rate or rates so prescribed.

(2) Provided that the 4 [Municipality] shall deduct from the charge on account of water supplied in any month one-twelfth of the water-tax assessed on the building or land.

231. Exemption Of [Municipality] From Liability Owing To Accident, Etc :-

Notwithstanding any obligation imposed on a 6 [Municipality] by Section 228 or by any agreement made under Section 229, a 7 [Municipality] shall not be liable to any forfeiture, penalty or

damages for failure to supply water, if the failure to supply arises from accident or from unusual drought or other unavoidable cause.

232. Subordination To Supply For Domestic Purposes Of Supply For Other Purposes :-

Notwithstanding any obligation to supply water imposed by an agreement under Section 229, the 8 [Municipality] may at any time cease to supply water for other than domestic purposes, if it is of the opinion that such supply would interfere with the supply of water for domestic purposes, in such case the 9 [Municipality] shall not be liable to any forfeiture, penalty or damages for so ceasing, -

(a) unless the failure to supply such water arises from a cause other than one specified in Section 231; and

(b) unless the 10 [Municipality] has undertaken to supply water for other than domestic purposes by an agreement made under Section 229, making provision for forfeiture, penalty or damages upon failure to supply such water.

233. Subordination Of Rights Of Supply To Restrictive Rules :-

Notwithstanding anything contained in Section 228 or in any agreement under Section 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994.190 229, the supply of water to any building or land shall be, and shall be deemed to have been granted, subject to the provisions of any rule made under Section 235, and in particular to any provision as to the limit or stoppage of a supply and as to the prevention of waste and misuse.

234. Provision As To Meters And Connection Pipes :-

All meters, connection pipes and other works incidental to the supply of water to any building or land shall except as otherwise provided by rule, be supplied, repaired extended and altered as may be necessary, at the expense of the person requiring the supply, but shall be under the control of the 1 [Municipality].

235. Water-Supply Rules :-

(1) The following matters relating to supply of water from municipal or public water works shall be regulated and governed by rules,

namely, -

- (a) any matter in respect of which this Act declares that provision shall be made by rule;
- (b) the size and nature of the mains and pipes to be laid and the water works to be constructed by a 2 [Municipality] for the supply of water;
- (c) the construction, control and maintenance of municipal waterworks and of pipes and fittings in connection therewith;
- (d) the size and nature of the stand-pipes or pumps to be erected by a 3 [Municipality];
- (e) the mains or pipes in which fire-plugs are to be fixed and the places at which keys of the fire-plugs are to be deposited;
- (f) the periodical analysis by a qualified analyst of the water supply by a 4 [Municipality];
- (g) the conservation and prevention of injury or contamination to sources and means of water supply and appliance for the distribution of water, whether within or without 5 [the municipal area];
- (h) the manner in which connections with water works may be constructed or maintained and the agency which shall or may be employed for such construction or maintenance;
- (i) the regulation of all matters and things connected with the supply and use of water and turning on and turning off and preventing waste of water; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.191
- (j) the collection of water-tax and of charges relating to the supply of water and the prevention of evasion of the same; and
- (k) any other matter relating to the supply of water in respect of which this Act makes no provision or insufficient provision and further provision is, in the opinion of the State Government, necessary.

(2) Provided that no rule shall be made under sub-section (1) affecting a cantonment or part of cantonment without the previous sanction of the Central Government.

235A. Rules Relating To The Supply Of Water By A Person Or Company :-

The following matters relating to the grant of a licence under clause (c) of Section 224 of the Act shall be regulated and governed by rules to be made by the State Government subject to the conditions prescribed in Section 300, -

- (1) the selection of a licensee;

- (2) the form of application for a licence;
 - (3) the form of licence;
 - (4) the preparation and submission of returns and accounts by the licensee in a prescribed form;
 - (5) duties of a licensee;
 - (6) the securing of a regular and wholesome supply of water by the licensee to consumers;
 - (7) the appointment of an officer of a specified rank and class to ensure that the provisions of the Act and the rules relating to water-works are being properly carried out; and
 - (8) any other matter which is necessary for the proper working of the licence.]
- Power for removal of structures interfering with public works

236. Unauthorised Construction Of Street Over Drain Or Water-Work :-

(1) Where, on or after the 10th day of March, 1900, any street has been made or any building, wall or other structure has been, erected or any tree has been planted without 1 Ins. by U.P. Act No. 6 of 1933.192 the permission in writing of the 1 [Municipality] over a public drain or culvert or a water-work vested in the 2 [Municipality], the 3 [Municipality] may, -

- (a) by notice require the person who has made the street, erected the structure or planted the tree, or the owner or occupier of the land on which the street has been made, structure erected or tree planted, remove or deal in any other way the 4 [Municipality] thinks fit with the street, structure or tree; or
- (b) itself remove or deal in any other way it, thinks fit with the street, structure or tree.

(2) Any expense incurred by a 5 [Municipality] by action taken under clause (b) of sub-section (1) shall be recoverable in the manner prescribed by Chapter VI from the person by whom the street was made, structure erected or tree planted. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.

CHAPTER 8

OTHER POWERS AND PENALTIES

237. Places For Slaughter Of Animals For Sale :-

(1) The 6 [Municipality] may, with the approval of the District Magistrate, fix premises, either within or without the limits of the 7 [municipal area] for the slaughter or animals, or animals of any specified description for sale, and may, with the like approval, grant and withdraw licenses for the use of such premises.

(2) When such premises have been fixed by the 8 [Municipality] beyond 9 [the limits of municipal area], it shall have the same power to make bye-laws for the inspection and proper regulation of the same as if they were within those limits.

(3) When such premises have been fixed, no person shall slaughter any such animal for sale at any other place within the 1 [municipal area].

(4) Should any one slaughter for sale any such animals at any other place within the 2 [municipal area], he shall be liable on conviction to a fine which may extend to twenty rupees for every animal so slaughtered. NOTE Right to life - Governmental protection and the guarantee by the State to lead a decent and meaningful life under Article 21 of the Constitution of India is of recent origin. In fact in Buffalo Traders Welfare Association V. Maneka 3 , this Article was invoked even for providing hygienic condition in Idgah Slaughter House at Delhi. Safeguards are also available in the U.P. Municipalities Act.

238. Places For Slaughter Of Animals Not Intended For Sale Or Slaughter For Religious Purpose :-

The 5 [Municipality] may, by public notice, and with the previous sanction of the District Magistrate, fix premises within the 6 [municipal area] in which the slaughter of animals of any particular kind not for sale shall be permitted and prohibit, except in case of necessity, such slaughter elsewhere within the 7 [municipal area] :
6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 1994 Supp (3) SCC 448. 4 Raja Ram and another v. State of U.P. and others, (2000) 2 SAC 534. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 194 Provided that the provisions of this section shall not apply to animals slaughtered for any religious purpose.

239. Powers Of District Magistrate In Respect Of Animals Not Slaughtered For Sale :-

Whenever it appears to District Magistrate to be necessary for the preservation of the public peace or order, he may, subject to the control of the 8 [Prescribed Authority], prohibit or regulate, by public notice, the slaughter within the limits of a 9 [municipal area] of animal or animals of any specified description for purposes other than sale and prescribe the mode and route in and by which such

animals shall be brought to, and meat shall be conveyed from, the place of slaughter.

240. Disposal Of Flesh Imported In Contravention Of A Bye-Law Regulating Importation :-

Should the flesh of any cattle, sheep, goat or swine be brought within 10 [the limits of municipal area] in contravention of a bye-law made under sub-head (e) of Heading F of Section 298, it may be seized by an officer of 11 [Municipality] authorized in that behalf, and may be destroyed or otherwise disposed of as the 1 [Municipality] may, by general or special order, direct.

241. Licensing Of Markets And Shops For Sale Of Certain Articles :-

(1) The right of any person to use any place, within the limits of a 2 [municipal area], other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under Heading F of Section 298.

(2) Provided that, where any bye-law is in force requiring a licence for the establishment or maintenance of a market or shop for the sale of any article mentioned in sub-section (1), the 3 [Municipality] shall not, -

(a) refuse a licence for the maintenance of a market or shop lawfully established at the date of such bye-law coming into force, if application be made within six months from such date, except on the ground that the place where the market or shop is established fails to comply with any conditions prescribed by or under this Act; or

(b) cancel, suspend or refuse to review any licence granted under such bye-law for any cause other than the failure of the licensee to comply with the conditions of the licence or with any provision of, or made under this Act. 8 Subs. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994.

242. Improper Feeding Of Animals Kept For Dairy Purposes Or Used For Food :-

Whoever feeds, or allows to be fed an animal which is kept for dairy purposes, or may be used for food, on filthy or deleterious

substances, shall be liable on conviction to a fine which may extend to fifty rupees.

243. Inspection Of Places For Sale Of Food, Drink And Drugs

:-

The 4 [President], the executive officer, 5 [the medical officer of health] and, if authorized in this behalf by resolution, any other member, officer or servant of the 6 [Municipality] may, without notice at any period of the day or night, enter into and inspect a market, shop, stall or place used for the sale of food or drink for man or as a slaughter-house; or for the sale of drugs, and inspect and examine any article of food or drink, or any animal or drug which may be therein.

244. Seizure Of Unwholesome Articles And Removal Of Deleterious And Unspent Drugs :-

(1) If in the course of the inspection of a place under the preceding section, an article of food or drink or animal appears to be intended for the consumption of man and to be unfit therefore, the 1 [Municipality] may seize and remove the same, or may cause it to be destroyed, or to be so disposed of as to prevent its being exposed for sale or use for such consumption.

(2) If it is reasonably suspected that a drug has been improperly adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, or to change its operation, or to render it noxious, the 2 [Municipality] may remove the same, giving a receipt therefore, and may produce it before a Magistrate.

(3) If it appears to a Magistrate before whom a drug has been produced under sub-section (2) that the drug has been improperly adulterated or has become inert, unwholesome or deteriorated as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may deem fit, and if any offence appears to have been committed, he may proceed to take cognizance thereof.

Nuisances for certain trades and professions

245. Regulation Of Offensive Trades :-

(1) If it is shown to the satisfaction of a 3 [Municipality] that any building or place within the limits of the 4 [municipal area] which any person uses or intends to use as a factory or other place of

business for the manufacture, storage, treatment or disposal of any article, by reason of such use, or by reason of such intended use, occasions or is likely to occasion a public nuisance, the 4 Subs. by U.P. Act No. 7 of 1949. 5 Ins. by U.P. Act No. 5 of 1932. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.196 5 [Municipality] may at its option require by notice the owner or occupier of the building or place, -

(a) to desist or refrain, as the case may be, from using, or allowing to be used, the building or place for such purpose; or

(b) only to use, or allow to be used, the building or place for such purpose under such conditions or alter such structural alterations as the 6 [Municipality] imposes or prescribes in the notice with the object of rendering the use of the building or place for such purpose free from objection.

(2) Whoever, after receiving a notice given under sub-section (1) uses or allows to be used any building or place in contravention of the notice shall be liable on conviction to a fine which may extend to two hundred rupees and to a further fine which may extend to forty rupees for every day on which he so uses or allows to be used the place of building after the date of the first conviction.

(3) The State Government may, by notification, make the provisions of this section, or of any bye-law made under Heading G of Section 298, applicable to any area beyond the 1 [municipal area] lying within a distance of mile from the 2 [boundary of the municipal area.] NOTE Restriction - Meaning of. - Three propositions are well settled :

(j) "restriction" includes cases of prohibition;

(ii) the standard for judging reasonability of restriction or restriction amounting to prohibition remains the same, excepting that a total prohibition must also satisfy the test that a lesser alternative would be inadequate; and

(iii) whether a restriction in effect amounts to a total prohibition is a question of fact which shall have to be determined with regard to the facts and circumstances of each case, the ambit of the right and the effect of the restriction upon the exercise of that right.

246. Loitering And Soliciting For Immoral Purpose :-

Whoever, in a street or public place within the limits of the 4 [municipal area] loiters for the purpose of 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P.

Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534. 4 Subs. by U.P. Act No. 12 of 1994.197 prostitution or importunes a person to the commission of sexual immorality, shall be liable on conviction to a fine which may extend to fifty rupees. Provided that no Court shall take cognizance of an offence under this section except on the complaint of the person importuned, or on the complaint of a municipal officer not below the rank of a sub-inspector respectively authorized in this behalf in writing by the 5 [Municipality] and the District Magistrate.

247. Brothels, Etc :-

- (1) When a Magistrate of the first class receives information, -
- (a) that a house in the vicinity of the place of worship or an educational institution or a boarding house, or hostel or mess used or occupied by student is used as a brothel or for the purpose of habitual prostitution or by disorderly persons of any description; or
 - (b) that any house is used as aforesaid to be an annoyance of respectable inhabitants in the vicinity; or
 - (c) that house in the immediate neighbourhood of a cantonment is used as a brothel or for the purpose of habitual prostitution; he may summon the owner, tenant, manager or occupier of the house to appear before him either in person or by agent; and if satisfied that the house is used as described in clause (a), (b), or clause (c), may, by a written order, direct such owner, tenant, manager, or occupier, within a period to be stated in such order, not less than five days from the date thereof, to discontinue such use : Provided that action under this sub-section shall be taken only, - 1. with the sanction or by order of the District Magistrate; or a. on the complaint of three or more persons residing in the immediate vicinity of the house to which the complaint refers; or b. 1 [* * *] on the complaint of the 2 [Municipality].
- (2) If a person against whom an order has been passed by a Magistrate under sub-section (1) fails to comply with such order within the period stated therein, the Magistrate may impose on him a fine which may extend to twenty-five rupees for every day after the expiration of that period during which the house is so used.

248. Begging, Etc :-

3 [* * *] Whoever, in a street or public place within the 4 [municipal area], begs importunately for alms, or exposes or exhibits, with the object 5 Subs. by U.P. Act No. 12 of 1994. 1

Omitted by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 12 of 1994. 3 Number (1) omitted by U.P. Act No. 13 of 1948. 198 of exciting charity a deformity or disease or an offensive sore or wound, shall be liable on conviction to imprisonment which may extend to one month or to a fine which may extend to fifty rupees or to both. 5 [* * *] Public Safety

249. Disposal Of Mad Dog, Etc :-

The 1 [Municipality] may authorize any person to destroy or to cause to be destroyed, or to confine or to cause to be confined, for such period as the 2 [Municipality] may direct, any dog or other animal suffering, or reasonably suspected to be suffering, from rabies, or bitten by a dog, or other animal suffering or suspected as aforesaid.

250. Muzzling Order :-

(1) Where in any 1 [municipal area] the prevalence of rabies in the opinion of the 2 [Municipality] renders it necessary, the 3 [Municipality] may by public notice require the muzzling, for such period as it thinks fit or until such notice is cancelled, of all dogs within the 4 [municipal area], or within any part of the 5 [municipal area].

(2) During such period of time the 6 [Municipality] may exercise the power conferred by Section 249 in respect of any dog which is found at large without a muzzle after a date to be specified in the notice.

251. Bar To Compensation For Dogs Lawfully Destroyed :-

No damages shall be payable in respect of a dog or other animals destroyed or otherwise disposed of under the provisions of Section 249 or 250 or of any bye-law made under sub-head

(h) or (l) of Heading H of Section 298.

252. Neglect Of The Rule Of The Road :-

Whoever, in driving, leading or propelling a vehicle along a street, fails, except in the case of actual necessity, -

(a) to keep to the left; and

(b) when he is passing a vehicle going in the same direction, to keep to the right of that vehicle, shall be liable on conviction to a fine which may extend to ten rupees. 4 Subs. by U.P. Act No. 12 of 1994. 5 Proviso and sub-sections (2) and (3) omitted by U.P. Act No. 13 of 1948. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2

Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 199 Exception. - This section shall not apply in the case of a 7 [municipal area] wholly or in part situated in a hilly tract.

253. Driving Vehicles Without Proper Lights :-

Whoever drives, leads or propels a vehicle between nightfall and dawn in a street, unless the vehicle is properly supplied with lights, shall be liable on conviction to a fine which may extend to twenty rupees : Provided that a 8 [Municipality] may by a special resolution confirmed by the 9 [Prescribed authority] direct that this section shall not apply in the case of vehicles proceeding at not more than walking pace.

254. Failure To Remove Elephant, Etc. To Safe Distance :-

Whoever, being in charge of an elephant, camel or bear, omits, on being requested to do so, to remove so far as may be practicable his elephant, camel or bear to a safe distance on the approach of a horse, whether ridden, driven or led, shall be liable on conviction to a fine which may extend to twenty rupees.

255. Prohibition Of Tethering Of Cattle, Etc. On Street :-

(1) The owner or keeper of any cattle or other animals, found tethered, or straying about without a keeper in a street or public place shall be liable on conviction to a fine which may extend to 1 [two hundred and fifty] rupees.

(2) An animal found tethered as aforesaid may be removed by a municipal officer or servant or by a police officer to a pound as if the animal had been found straying.

256. Halting Vehicles Or Animals On Public Grounds :-

Where any land vested in the 2 [Municipality] 3 [or any public place] is, without the permission in writing of the 4 [Municipality], used as a halting place for any vehicle or animal or as a place encampment, the owner or a keeper of the vehicle or animal or the person encamping, as the case may be, shall be liable on conviction to a fine which may extend to 5 [one hundred] rupees and in the case of a continuing breach, to a further fine which may extend to 6 [ten] rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the commission of the offence. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 7 of

1949. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Added by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 26 of 1964.

257. Power As To Inflammable Structures :-

(1) The 7 [Municipality] may, by public notice, direct that within certain limits to be fixed by it, the roofs and external walls of huts or other buildings shall not be made or renewed with grass, mats leaves, or other highly inflammable materials without the consent of the 8 [Municipality] in writing.

(2) The 9 [Municipality] may at any time by written notice require the owner of a building, which has an external roof or wall made of any such material as aforesaid, to remove such roof or wall within such reasonable time as shall be specified in the notice, notwithstanding that a public notice under sub-section (1) has not been issued or that such roof or wall was made with the consent of the 10 [Municipality] or before the issue of such public notice, if any : Provided that in the case of any such roof or wall in existence before the issue of such public notice or made with the consent of the 1 [Municipality], the 2 [Municipality] shall make compensation for any damage caused by the removal which shall not exceed the original cost of constructing the roof or wall.

(3) Whoever, without such consent as is required by sub-section (1), makes or renews, or causes to be made or renewed or in disobedience to a notice given under sub-section (2) suffers to remain, a roof or wall or such material as aforesaid, shall be liable on conviction to a fine which may extend to twenty-five rupees and to a further fine which may extend to ten rupees for every day on which the offence is continued, after the date of the first conviction.

258. Power To Search For Inflammable Materials In Excess Of Authorized Quantity :-

(1) The 3 [Municipality] may, without notice and at any period of the day or night, enter into and inspect a house or building which is suspected to contain petroleum, or other inflammable material, in excess of the quantity permitted to be kept in such house or building under the provision of Section 245 or of any bye-law.

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the house or building contrary to any direction made under Section 245 or the provision of any bye-law, he may pass an order confiscating the same. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994.201

(4) Subject to any provision of, or made under, this or any other enactment, the material so confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the municipal fund.

(5) No order of confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.

259. Stacking, Etc. Of Inflammable Materials :-

The 4 [Municipality] may, where it appears to be necessary for the prevention of danger to life or property, by public notice prohibit all persons from stacking or collecting wood, dry grass, straw or other inflammable materials, or from placing mats or thatched huts or lighting fires in a place or within limits specified in the notice.

260. Dangerous Quarrying :-

(1) If, in the opinion of the 5 [Municipality], the working of a quarry, or the removal of stone, earth or other material from the soil in any place is dangerous to persons residing in, or entitled to visit, the neighbourhood thereof, or creates, or is likely to create, a public nuisance, the 1 [Municipality] may, by written notice, prohibit the owner of the said quarry or place, or the person responsible for such working or removal, from continuing or permitting the working of such quarry, or the removal of such materials, or may require him to take such order with such quarry or place as the 2 [Municipality] shall direct for the purpose of preventing danger or abating the nuisance arising or likely to arise therefrom.

(2) If, in any case referred to in sub-section (1) it appears to the 3 [Municipality] to be necessary in order to prevent imminent danger, it may cause a proper hoarding or fence to be put up for the protection of passengers near a quarry or place, and any expense incurred by the 4 [Municipality] in taking such action shall be paid by the owner or other person as aforesaid, and shall be recoverable

in the manner provided by Chapter VI.

261. Displacing Pavements, Etc :-

(1) Whoever displaces, takes up or makes an alteration in, or otherwise interferes with, the pavement, gutter, flags, or other materials of a public street or the fences, walls or posts thereof, or a municipal lamp, lamp post bracket, direction post, stand post, hydrant or other such municipal property therein, without the written consent of the 5 [Municipality], or other lawful authority, and whoever extinguishes a municipal light shall be liable on conviction to a fine which may extend to one 6 [thousand] rupees. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 26 of 1964.202

(2) Any expense incurred by the 7 [Municipality] by reason of the doing of any such thing as is mentioned in sub-section (1) may be recovered from the offender in the manner provided by Chapter VI.

262. Discharging Firearms, Etc :-

Whoever discharges firearms or lets off fireworks or fire-balloons, or engages in a game, in such a manner as to cause or to be likely to cause, danger to persons passing by or dwelling or working in the neighbourhood, or risk of injury to property, shall be liable on conviction to a fine which may extend to twenty rupees.

263. Power For The Prevention Of Danger From Ruinous Buildings, Unprotected Wells, Etc :-

(1) A 8 [Municipality] may require by notice the owner or occupier of any land or building, -

(a) to demolish or to repair in such manner as it deems necessary any building wall, bank or other structure, or anything, affixed thereto, or to remove any tree, belonging to such owner or in the possession of such occupier which appears to the 1 [Municipality] to be in a ruinous condition or dangerous to persons or property; or

(b) to repair, protect or enclose, in such manner as it deems necessary, any well, tank reservoir, pool or excavation belonging to such owner or in the possession of such occupier, which appears to the 2 [Municipality] to be dangerous by reason of its situation, want of repair or other such circumstances.

(2) Where it appears to the 3 [Municipality] that immediate action is necessary for the purpose of preventing imminent danger to any person or property, it shall be the duty of the 4 [Municipality] itself to take such immediate action, and in such case, notwithstanding the provisions of Section 287, it shall not be necessary for the 5 [Municipality] to give notice, if it appears to the 6 [Municipality] that the object of taking such immediate action would be defeated by the delay incurred in giving notice.

264. Power To Prevent Unoccupied Buildings Or Land Becoming A Nuisance :-

The 7 [Municipality] may, by notice, require the owner of a building or land which, by reason of abandoned or disputed ownership or other cause, is unoccupied and has become a resort of idle and disorderly persons or otherwise occasions, or is likely to 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 203 occasion, a public nuisance, to secure and enclose the same within a reasonable time fixed in the notice.

265. Obstruction Of Street :-

(1) Whoever without the written permission of the 8 [Municipality],

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(a) causes or allows any vehicle, with or without an animal harnessed thereto, remain or stand so as to cause obstruction in any street longer than may be necessary for loading or unloading or for taking up or setting down passengers; or

(b) leaves or fastens any vehicle or animal so as to cause obstruction in any street; or

(c) exposes any article for sale, whether upon a stall or booth or in any other manner, so as to cause obstruction in any street; or

(d) deposits or suffers to be deposited, any building materials, box, bale, package, or merchandise in any street; and

(e) erects or sets up any fence, rail, post, stall or any scaffolding or any other such fixture in any street; or

(f) in any manner willfully obstructs or causes obstruction of the free passage of any street; shall be liable upon conviction to a fine which may extend to 1 [five hundred rupees and in the case of a continuing breach to a further fine which may extend to ten rupees

for every days after the day of first conviction during which the offender is proved to have persisted in the commission of the offence].

(2) The 2 [Municipality] shall have power to remove any obstruction referred to in sub-section (1), and the expense of such removal shall be recoverable from the offender in the manner provided by Chapter VI.

(3) The power exercisable by a 3 [Municipality] under sub-section (2) to remove obstructions from streets shall also be exercisable for the removal by the 4 [Municipality] of obstructions from any open space, whether vested in the 5 [Municipality] or not, which is not private property. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.204

(4) Nothing contained in this section shall apply to any obstruction of a street permitted by the 6 [Municipality] under any section of this Act or any rule or bye-law made or licence granted thereunder.

266. Digging Up Of Public Land :-

Whoever, without the written permission of the 7 [Municipality] digs up or removes earth, sand or other material from any open space, whether vested in the 8 [municipality] or not, which is not private property, shall be liable upon conviction to a fine not exceeding 9 [five hundred] rupees, and, if the offence is a continuing offence, to a further fine not exceeding ten rupees for every day during which the offence continues after the date of first conviction for such offence. Sanitation and prevention of disease

267. Private Drains, Cesspool, Dust Bins, Latrines, Etc :-

(1) A 1 [Municipality] may require by notice the owner or occupier of any land or building, -

(a) to close, remove, alter repair, cleanse, disinfect or put in good order any latrine, urinal, water-closet, drain cesspool, dust-bin or other receptacle for filth, sullage-water, rubbish or refuse pertaining to such land or building, or to remove or alter any door or trap-door of any such latrine, urinal or water-closet which opens on to a street or drain; or

(b) to provide such latrines, urinals, water-closets, drains, cesspools, dustbins or other receptacles for filth, sullage-water, rubbish or refuse as should in its opinion be provided for the building or land whether in addition or not to any existing ones; or

(c) to cause any latrine, urinal or water-closet provided for the building or land to be shut-off by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood.

(2) When requiring under sub-section (1) anything to be provided altered or done, the 2 [Municipality] may specify in the notice the description of the thing to be provided, the pattern so as to conform with which the thing is to be altered, and the manner in which the thing is to be done.

268. Latrines For Factories, Schools And Places Of Public Resort :-

The 3 [Municipality] may require by notice any person employing more than twenty 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 26 of 1964. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 205 workmen or labourers or owning, managing or having control of a market, school or theatre or other place of public resort to provide such latrines and urinals as it may deem fit, and to cause the same to be kept in proper order and to be daily cleansed : Provided that nothing in this section shall apply to a factory regulated by the Indian Factories Act, 1911.

269. Power To Require Removal Of Nuisance Arising From Tanks, Etc :-

(1) The 5 [Municipality] may, by notice, require the owner or occupier of any land or building cleanse, repair, cover, fill up or drain off a private well, tank, reservoir, pool, depression or excavation therein which may appear to the 6 [Municipality] to be injurious to health or offensive to the neighbourhood.

(2) Provided that the owner or occupier may require the 1 [Municipality] to acquire at its expense, or otherwise, provide, any land or right in land necessary for the purpose of effecting drainage ordered under sub-section (1).

270. Inspection Of Drains, Privies, Etc :-

(1) Subject to the provisions of Section 278, the 2 [Municipality] may inspect a drain, water-closet, latrine, urinal, cesspool or other receptacle for filth, and for that purpose may cause the ground to be opened where it thinks fit.

(2) The expense of such inspection and of causing the ground to be closed and made good as before shall be borne by the 3 [Municipality], unless the drain, privy, water-closet, latrine, urinal, cesspool or other receptacle for filth is found to be in bad order or condition, or was constructed in contravention of the any provisions of, or made under, this or any other enactment, in which case such expenses shall be paid by the owner or occupier and shall be recoverable in the manner, provided by Chapter VI.

271. Cleansing Of Filthy Buildings Or Land :-

Should any building or land be in a filthy or unwholesome state, the 4 [Municipality] may, by notice, require the owner or occupier thereof to cleanse, or otherwise, put in a proper state, the building or land, and thereafter to keep the same in a clean and proper state.

272. Failure To Remove Offensive Matter :-

Whenever on any building or land, - 4 See now Factories Act, 1948. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.

(a) any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter is kept for more than twenty-four hours, or otherwise than in some proper receptacle; or

(b) any receptacle for such things is suffered to be in a filthy or noxious state or is not subjected to any proper method of cleaning or purifying; the owner or occupier of the building of land shall be liable on conviction, to a fine which may extend to fifty rupees, and, in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender has been proved to have persisted in the commission of the offence.

273. Regulation Of The Disposal Of Rubbish, Night-Soil, Etc :-

(1) The 5 [Municipality] may, -

(a) provide receptacles and places for the temporary deposit of offensive matter and rubbish;

(b) appoint places for the disposal of night-soil, carcasses and other offensive matter and rubbish;

(c) by public notice issue directions as to the time, manner and

conditions at, in and subject to which any offensive matter or rubbish referred to in clauses (a) and (b) may be removed along a street, deposited or otherwise disposed of.

(2) It shall be sufficient notice of the appointment of a place under clause (b) of sub-section (1) that a notice board indicating such appointment is displayed on or near the place appointed.

(3) Before appointing a place outside 1 [the limits of the municipal area] under clause (b) of sub-section (1), the 2 [Municipality] shall obtain the previous sanction of the District magistrate.

274. Penalty For Improper Disposal Of Rubbish, Night-Soil, Etc :-

The occupier of any building or land from which any offensive matter, rubbish night soil or carcass is thrown or deposited on any part of a public place or street, or into any public sewer or drain, or into any drain communicating with a public sewer or drain, otherwise than in a place appointed under clause (b) or in a receptacle provided under clause (a) of sub-section (1) of Section 273, and any person contravening any 5 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.207 direction of a 3 [Municipality] issued under clause (c) of the said sub-section shall be liable, upon conviction, to a fine not exceeding 4 [two hundred and fifty] rupees.

275. Disposal Of Dead Bodies Of Animals :-

(1) Whenever an animal in the charge of a person dies, otherwise than by being slaughtered either for sale or consumption or for some religious purposes, the person-in-charge thereof shall, within twenty-four hours, either, -

(a) convey the carcass to a place (if any) fixed by the 5 [Municipality] under Section 273 for the disposal of the dead bodies of animals or to a place beyond 6 [the limits of the municipal area] not being within one mile of those limits; or

(b) give notice of the death to the 7 [Municipality], whereupon the 8 [Municipality] shall cause the carcass to be disposed of.

(2) Every person bound to act in accordance with sub-section (1) shall, if he fails so to act, be liable upon conviction to a fine which may extend to ten rupees.

(3) For the disposal of the dead body of an animal under clause (b) of subsection (1), the 1 [Municipality] may charge such fee as the 2 [Municipality] has prescribed, and may recover the same, if not paid in advance, from the owner or keeper of the animal in the

manner provided by Chapter VI.

276. Penalty For Discharging Sewage On Public Street, Etc :-

Whenever the water of a sink, sewer or cesspool or any other offensive matter is allowed to flow, drain or be put upon a public street or place, or into a sewer to drain not set apart for the purpose without the permission in writing of the 3 [Municipality] or in contravention of any condition prescribed in such permission, the owner or occupier of the land or building from which such water or offensive matter so flows, drains or is put shall be liable, upon conviction, to a fine which may extend to 4 [two hundred and fifty] rupees.

277. Power To Enter And Disinfect Buildings :-

Subject to the provisions of Section 287, the 5 [Municipality] may enter and inspect a building, and may be notice 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 12 of 1994. 208 direct all or any part thereof to be internally or externally lime washed, disinfect or otherwise cleansed for sanitary reasons : Provided that nothing in this section shall apply to a factory regulated by the Indian Factories Act, 1911.

278. Building Unfit For Human Habitation :-

(1) Should a building, or a room in a building, be, in the opinion of the 7 [Municipality], unfit for human habitation in consequence of the want of proper means of drainage or ventilation or otherwise, the 8 [Municipality] may, by notice, prohibit the owner or occupier thereof from using the building or room for human habitation or suffering it to be so used either absolutely or unless within a time to be specified in the notice, he effects such alteration therein as is prescribed in the notice.

(2) Upon failure of a person to whom notice is issued under subsection (1) to comply therewith, it shall be lawful for the 9 [Municipality] to require by further notice the demolition of the building or room.

279. Penalty For Failure To Give Information Of Cholera,

Small-Pox, Etc :-

Whoever, -

(a) being a medical practitioner and in the course of such practice becoming cognizant of the existence of cholera, plague, small-pox or other infectious disease that may be notified in this behalf by the 1 [State Government] in any dwelling other than a public hospital in the 2 [municipal area], or

(b) in default of such medical practitioner, being the owner or occupier of such dwelling, and being cognizant of the existence of any such infectious disease therein, or

(c) in default of such owner or occupier being the person-in-charge of, or in attendance on, a person suffering from any such infectious disease in such dwelling, and being cognizant of the existence of the disease therein; fails to give 3 [within twenty-four hours of becoming so-cognizant] or gives false information to such officer as the 4 [Municipality] may appoint in this behalf respecting the existence of such disease, shall be liable upon conviction to a fine which may extend to fifty rupees : 6 See now Factories Act, 1948. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by ALO 1950. 2 Subs. by U.P. Act No. 12 of 1994. 3 Added by U.P. Act No. 17 of 1934. 4 Subs. by U.P. Act No. 12 of 1994. 209 Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it is shown that he had reasonable cause to suppose that the information had been, or would be, duly given.

279A. Power To Examine Person Suspected To Be Suffering From Infectious Diseases :-

When there is any reason to believe that a case of infectious disease notifiable under Section 279 has occurred in a building the Medical Officer of Health or other competent person deputed by him shall, subject to the provisions of Section 287, enter the said building and make an examination of the person or persons suspected to be suffering from the disease and may also obtain material for pathological examination, if necessary : Provided that all females above the age of eight years shall be inspected by persons of their own sex only.]

280. Removal To Hospital Of Patients :-

When a person suffering or certified by a duly qualified medical practitioner to be suffering from cholera, plague, smallpox or any other infectious disease that may be notified in this behalf by the 1 [State Government] is, -

(a) without proper lodging or accommodation, or

(b) living in a sarai or other public hostel, or

- (c) living in a room or house which he neither owns nor is otherwise entitled to occupy, or
- (d) lodged in a room or set of apartments occupied by more than one family and any of the occupiers objects to his continuing to lodge therein, the 2 [Municipality] may, on the advice of a medical officer of a rank not inferior to that of an assistant surgeon, remove the patient to a hospital or place at which person suffering from such disease are received for medical treatment, and may do anything necessary for such removal.

281. Penalty For Acts Done By Persons Suffering From Certain Disorders :-

Whoever, while suffering from an infectious, contagious, or loathsome disorder, -

- (a) makes or offers for sale an article of food or drink, for human consumption or a medicine or drug, or
- (b) willfully touches any such article, medicine or drug when exposed for sale by others, or
- (c) takes any part in the business of washing or carrying soiled clothes, 5 Added by U.P. Act No. 5 of 1932. 1 Subs by ALO 1950. 2 Subs. by U.P. Act No. 12 of 1994. 210 shall be liable upon conviction to a fine which may extend to 3 [fifty] rupees.

282. Prohibition Of Cultivation, Use Of Manure Or Irrigation Injurious To Health :-

(1) If 4 [the Director of Medical and Health Services] or Civil Surgeon or Health Officer certifies that the cultivation of any description of crops or the use of any kind of manure or the irrigation of land in any specified manner, -

- (a) in a place within the limits of 5 [municipal area] is injurious or facilitates practices are injurious to the health of persons dwelling in the neighbourhood, or
- (b) in a place within or beyond the limits of 6 [municipal area] is likely to contaminate the water supply of such 7 [municipal area] or otherwise render it unfit for drinking purposes, the 1 [Municipality] may by public notice prohibit the cultivation of such crop, the use of such manure or the use of the method or irrigation so reported to be injurious, or impose such conditions with respect thereto as may prevent injury or contamination.

(2) Provided that when on any land in respect of which such notice is issued, the act prohibited has been practised in the ordinary course of husbandry for the five successive years next preceding

the date of prohibition, compensation shall be paid from the municipal fund to all persons interested therein for damage caused to them by such prohibition.

283. Power To Require Owners To Clear Away Noxious Vegetation :-

The 2 [Municipality] may, by notice require the owner or occupier of any land to clear away and remove any vegetation or undergrowth which may be injurious to health or offensive to the neighbourhood.

284. Power To Require Excavations To Be Filled Up Or Drained :-

(1) In a 3 [municipal area] for which bye-laws have been made under sub-head (g) of Heading 1 of Section 298, the 4 [Municipality] may, by notice require the owner or occupier of any land upon which an excavation, cesspool, tank or pit has been made in contravention of such bye-laws, or in breach of the conditions under which permission to dig any such excavation, cesspool, tank or pit has been granted to fill up or drain the excavation, cesspool, tank or pit within a period to be specified in such notice. 3 Subs. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 7 of 1953. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.

(2) The 5 [State Government] may by notification extend the provision of this section and bye-laws made for the purposes of this section to an area beyond the 6 [municipal area] lying within a distance of a mile from the 7 [boundary of the municipal area].

285. Power In Respect Of Burial And Burning Ground :-

(1) The 8 [Municipality] may, by public notice, order a burial or burning ground which is certified by Civil Surgeon or the Health Officer to be dangerous, or likely to be dangerous, to the health of person living in the neighbourhood, to be closed from a date to be specified in the notice, and shall, in such case, if no suitable place for burial place exist within a reasonable distance, provide a fitting place for the purpose.

(2) Private burial places in such burial grounds may be excepted

from the notice, subject to such conditions as the 9 [Municipality] may impose in this behalf : Provided that the limits of such burial places are sufficiently defined and that they shall only be used for the burial or members of the family of the owners thereof.

(3) No burial or burning ground, whether public or private, shall be made or formed without the permission in writing of the 1 [Municipality].

(4) No person shall, except with the permission of the 2 [Municipality] in writing, bury or burn, or cause to be buried or burnt, a corpse in a place other than a recognized burial or burning ground.

(5) Should a person bury or burn, or cause or permit to be buried or burnt, a corpse, contrary to the provisions of this section, he shall be liable upon conviction to a fine which may extend to 3 [five hundred] rupees.

286. Bathing And Washing Places :-

The 4 [Municipality] may set apart suitable places for the purpose of bathing, and may specify the times at which, and the sex of the persons by whom such places may be used and may also set apart suitable places for washing animals or clothes or other things; and may by public notice prohibit bathing or the washing of animals or clothes or other things in a public place not so set apart, or at times or by persons other than those specified, and may in like manner prohibit an [* * *] act by which water in public places or rivers may be rendered foul or unfit for use or which causes or is likely to cause in convenience or annoyance to persons lawfully using such places. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 12 of 1994. 212 Inspection, entry, search, etc.

287. Ordinary Inspection :-

(1) The President, the executive officer and, if authorized in this behalf by resolution, any other member, officer or servant of the 5 [Municipality], may enter into or upon a building or land, with or without assistants or workmen, in order to make an inspection or survey or to execute a work which a 6 [Municipality] is authorized by this Act, or by rules or bye-laws, to make or execute, or which it is necessary for a 7 [Municipality], for any of the purposes or in

pursuance of any of the provisions of this Act or of rules or bye-laws, to make or execute :

(2) Provided that, -

(a) except when it is in this Act or in rules or bye-laws otherwise expressly provided, no entry shall be made between sunset and sunrise; and

(b) except when it is in this Act or in rules or bye-laws otherwise expressly provided, no building which is used as a human dwelling shall be so entered, except with the consent of the occupier thereof, without giving the said occupier not less than four hours previous written notice of the intention to make such entry; and

(c) sufficient notice shall in every instance be given even when any premises may otherwise be entered without notice, to enable the inmates of an apartment appropriated for females to remove to some part of the premises where their privacy need not be disturbed; and

(d) due regard shall always be had to the social and religious usages of the occupants of the premises entered.

288. Preventive Inspection :-

Where there is reason to believe that, in any building or on any land, a work has been executed in connection with any municipal water-works, drainage works or other municipal undertaking in contravention of the provisions of this Act or of rules or bye-laws, the 1 [President] or, if so directed by the 2 [President] the executive officer 3 [or the medical officer of health] may at any time and without notice inspect such building or land.

289. Powers For Effecting Entry :-

It shall be lawful for a person authorized under the provisions of Section 287 or 288 to make an entry for the purpose of inspection or of search, to open to cause to be opened a door, gate or other barrier, -

(a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search; and 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 7 of 1949. 2 Subs. by U.P. Act No. 7 of 1949. 3 Ins. by U.P. Act No. 5 of 1932.

(b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

290. Power Of [Municipality] To Require Certain Works To Be Executed By Its Own Agency :-

(1) The 5 [Municipality] may by bye-law require any water-works, or work of the nature to which Sections 192, 267 and 268 refer, to be executed by municipal or other agency under its own orders.

(2) The expenses of any work so executed shall be paid by the person by whom the work would otherwise have been executed unless the 6 [Municipality] shall, by a general or special order or resolution, sanction, as it is hereby empowered to sanction, the execution of such work at the charge of the municipal fund.

(3) Any pipe, fittings, receptacles or other, appliances for or connected with any water-works or with the drainage or private buildings or lands shall, if supplied, constructed or erected at the expense of the 7 [Municipality], to be municipal property unless the 1 [Municipality] shall have transferred its interest therein to the owner of such buildings or land.

291. Recovery Of Rent On Land :-

(1) Where any sum is due on account of rent from a person to a 2 [Municipality] in respect of land vested in, or entrusted to the management of the 3 [Municipality], the 4 [Municipality] may apply to the Collector to recover any arrear of such rent as if it were an arrear of land revenue.

(2) The collector on being satisfied that the sum is due shall proceed to recover it as an arrear of land revenue.

292. Recovery Of Rent Of Other Immovable Property :-

Any arrears due on account of rent from a person to the 5 [Municipality] in respect of immovable property other than land vested in or entrusted to the management of the 6 [Municipality], shall be recovered in the manner prescribed by Chapter VI.

293. Fees For Use, Otherwise Than Under A Lease Of Municipal Property :-

(1) The 7 [Municipality] may charge fees to be fixed by bye-law or by public auction or by agreement, for the use or occupation (otherwise than under a lease) of any 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of

1994. 7 Subs. by U.P. Act No. 12 of 1994. 214 immovable property vested in, or entrusted to the management of the 8 [Municipality] including any public street or place of which it allows the use or occupation whether by allowing a projection thereon or otherwise.

(2) Such fees may either be levied along with the fee charged under Section 294 for the sanction, licence or permission or may be recovered in the manner provided by Chapter VI. NOTE Section 293(1) and 298(2)(j)(d) of the United Provinces Municipalities Act, 1916, as amended at the time they were extended to the town areas in the United Provinces do not empower the Town Area Committee to make any bye-law authorizing it to charge any fees otherwise than for the use or occupation of any property vested in or entrusted to the management of the Town Area Committee including any public street. Therefore, the bye-laws prima facie go much beyond the powers conferred on the responded Committee by the sections mentioned above and the petitioner complains against the enforcement of these bye laws against him as he carries on business in his own shop and not in or on any immovable property vested in the Town Area Committee or entrusted to their management.

293A. Power To Impose Fees :-

A 3 [Municipality] may with the previous sanction of the State Government impose and levy fee for use of any place to which the public is allowed access and at which the 4 [Municipality] may provide sanitary and other facilities to the public.]

294. Licence Fees, Etc :-

The 5 [Municipality] may charge a fee to be fixed by bye-law for any licence, sanctioned or permission which it is entitled to required to grant by or under this Act. NOTES Licence fees - Violation of Fundamental Right. - In the Corporation of Calcutta and another v. Liberty Cinema 6 , where the licence fee on the cinema houses was increased, the cinema owners challenged the levy of licence fee inter alia on the ground that their right to carry on business was restricted and was violative of Article 19(1)(f) and (g) of the Constitution of India. The contention was repelled and it was held that the imposition of licence fee does not amount to any violation of fundamental rights to carry on business. 7 8 Subs. by U.P. Act No. 12 of 1994. 1 Mohd. Yasin v. Town Area Committee, 1952 SCR 572. 2 Ins. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 AIR 1965 SC 1107. 7 Dr. Chakresh Kumar Jain v. State of U.P., (2001) 2 SAC 438. 215 Scope of the section. - It was

said that Section 294 of the Act contemplates the charge of a fee not only in the restricted sense of a fee for which quid pro quo is provided but also in the sense of a fee in which the taxation element is predominant. 8 Octroi duty - Imposition of. - The gross weight of bottles containing beverages as well as weight of beverages contained therein has to be taken into consideration for imposing the octroi duty. 9 Obstruction to persons employed by 10 [Municipality].

295. Penalty For Obstructing Person Employed By [Municipality] :-

Whoever obstructs or molests a person employed by, or under contract with the 12 [Municipality] under this Act in the performance of his duty or in the fulfillment of his contract, or removes a mark set up for the purpose of indicating any levels or direction necessary to the execution of works authorized by this Act, shall be liable on conviction to a fine which may extend to 1 [one thousand rupees or to imprisonment for a period which may extend to six months or to both]. 8 Nagar Mahapalika v. Durga Das Bhattacharya, (1968) 3 SCR 374 at 382. 9 Aqueous Victuals (P) Ltd. v. State of U.P. (1998) 5 SCC 474 at p.482. 10 Subs. by U.P. Act No. 12 of 1994. 11 Subs. by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964.

CHAPTER 9

REULES, REGULATIONS AND BYE-LAWS

296. Obligation And Power Of State Government To Make Rules :-

(1) The 2 [State Government] shall make rules consistent with this Act in respect to the matters described in Sections 3 [95, 127, 153 and 235].

(2) The 4 [State Government] may make rules consistent with this Act, -

(a) providing for any matter for which power to make provision is conferred expressly or by implication, on the 5 [State Government] by this or any other enactment in force at the commencement of this Act;

(b) generally for the guidance of a 6 [Municipality] or any Government Officer in any matter connected with the carrying out of the provisions of this or any other enactment relating to municipalities ; 7 [(c) for the appointment of an ad hoc committee to advice the 8 [Municipality] on the preparation of master plan for

the 9 [municipal area] and its execution; and

(d) providing for the layout of public streets, residential and nonresidential areas.] NOTE It has been contended that Section 296 empowers the State Government to make rules consistent with the said Act in respect of matters specified therein. It has been contended that the said rule making power does not include the power of municipality for sanctioning strength as contained in Section 96 and execution of contracts as contained in Section 97 of the said Act.

297. Power To Make Regulations As To Procedure, Etc :-

(1) A 2 [Municipality] may, by special resolution make regulations consistent with this Act, 2 Subs. by ALO 1950. 3 Subs. by U.P. Act No. 1 of 1955. 4 Subs. by ALO 1950. 5 Subs. by ALO 1950. 6 Subs. by U.P. Act No. 12 of 1994. 7 Ins. by U.P. Act No. 7 of 1953. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Amil Rashid v. Nagar Panchayat, Ajuha, 1999 (90) RD 574. 2 Subs. by U.P. Act No. 12 of 1994. 217 or with any rule under Section 296 or regulation under sub-section (2) made by the 3 [State Government], as to all or any of the following matters, -

(a) the time and place of the meetings of a 4 [Municipality];
(b) the manner of convening meetings, and of giving notice thereof;

(c) the conduct of proceedings 5 [including the asking of questions by members] at meetings, and the adjournment of meetings;

(d) the establishment of committees, other than merely advisory committees, for any purpose, and the determination of all matters relating to the constitution and procedure of such committees;

(e) the avoidance of any entry shown in the third column of Schedule II;

(f) with reference to sub-section (2) of Section 77, the augmentation of any maximum or minimum monthly salary specified in Sections 74, 75 or 76 with reference to powers over the staff;

(g) the delegation of powers, duties or functions to -

(i) the 6 [President] of the 7 [Municipality];

(ii) a committee constituted under clause (d);

(iii) a Chairman of such committee;

(iv) the executive officer; or

(v) 8 [* * *] any other servant of a 9 [Municipality]; 10 [(vi) any 11 [person in the service of the Government] who is employed as

civil surgeon, medical officer-incharge of a hospital or dispensary, medical officer of health, deputy inspector of schools or sub-deputy inspector of schools;]

(h) the absentee or other allowances of the servants employed by 1 [Municipality]; 3 Subs. by ALO 1950. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 6 of 1919. 6 Subs. by U.P. Act No. 7 of 1949. 7 Subs. by U.P. Act No. 12 of 1994. 8 Omitted by U.P. Act No. 26 of 1964. 9 Subs. by U.P. Act No. 12 of 1994. 10 Ins. by U.P. Act No. 4 of 1926. 11 Subs. by ALO 1950. 1 Subs. by U.P. Act No. 12 of 1994.

(i) the amount and nature of the security to be furnished by a servant of a 2 [Municipality] from whom it is deemed expedient to require security;

(j) the grant of leave to servants of a 3 [Municipality] and the remuneration to be paid to the persons, if any, appointed to act for them whilst on leave;

(k) the 4 [conditions of service including] period of service of all servants of a 5 [Municipality] and the conditions under which such servants, or any of them, shall, receive gratuities or compassionate allowances on retirement or on their becoming disabled through the execution of their duty, and the amount of such gratuities or compassionate allowance, and the conditions under which any gratuities or compassionate allowances may be paid to the surviving relatives of any such servants whose death has been caused through the execution of their duty;

(l) the payment of contributions, at such rates and subject to such conditions as may be prescribed in such regulations, to a pension or provident fund established by the 6 [Municipality] or with approval of the 7 [Municipality], by the said servants;

(m) the conditions subject to which sums due to a 8 [Municipality], may be written off as irrevocable, and the conditions subject to which the whole or any part of fee chargeable for distress may be remitted; 9 [* * *]

10 [(n) all matters similar to those set forth in clauses (e) to (m) and not otherwise provided for in this sub-section; and

(o) all matters similar to those set forth in clauses (a) to (d) and not otherwise provided for in this sub-section.]

(2) Provided that the 1 [State Government] may, if it thinks fit, make regulations consistent with this Act in respect of any of the matters specified in clauses 2 [(d) and] (h) to 3 [(n)] of sub-section (1), and any regulations so made shall 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by

U.P. Act No. 7 of 1953. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Omitted by U.P. Act No. 17 of 1934. 10 Subs. by U.P. Act No. 17 of 1934. 1 Subs. by ALO 1950. 2 Ins. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 17 of 1934. 219 have the effect of rescinding any regulation made by the 4 [Municipality] under the said sub-section in respect of the same matter or inconsistent therewith.

298. Power Of [Municipality] To Make Bye-Laws :-

(1) A 6 [Municipality] by a special resolution may, and where required by the State Government shall, make bye-laws applicable to the whole or any part of the 7 [municipal area], consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the 8 [municipal area] and for the furtherance of municipal administration under this Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), the 9 [* * *] 10 [Municipality], wherever situated, may, in the exercise of the said power, make any bye-law described in List I below and the 11 [* * *] 12 [Municipality], wholly or in part, situated in a hilly tract may further make, in the exercise of the said power, any bye-law described in List II below : LIST I BYE-LAWS FOR ANY 13[MUNICIPALITY] A - Building

(a) Extending, with reference to sub-section (2) of Section 178, the necessity of giving notice to all buildings;

(b) declaring, with reference to clause (d) of sub-section (3) of Section 178, an alteration of any specific description to be a material alteration;

(c) determining the information and plans to be furnished to the 14 [Municipality] under Section 179;

(d) prescribing that, on payment of fess in accordance with such scale as specified in this behalf plans and specifications shall be obtainable 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Omitted by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1995 for the words "municipal area". 11 Omitted by U.P. Act No. 12 of 1994. 12 Subs. by U.P. Act No. 26 of 1995 for the words "municipal area". 13 Subs. by U.P. Act No. 26 of 1995 for the words

"municipal area". 14 Subs. by U.P. Act No. 12 of 1994.220 from the 1 [Municipality] or from an agency prescribed by the 2 [Municipality];

(e) fixing, with reference to Section 181, the period for which a sanction shall remain in force;

(f) prescribing the type or description of buildings which may or may not, and the purposes for which a building may or may not be erected in any prescribed area or areas;

(g) prescribing the circumstances in which a mosque, temple, church or other sacred building may or may not be erected, re-erected or altered;

(h) prescribing with reference to the erection, re-erection or alteration of buildings or of any class of buildings, or any of the following matters -

(i) the materials and method of construction to be used for external and party walls, roofs and floors;

(ii) the position and the materials and method of construction of fire-places, chimneys, drains, latrines, privies, urinals and cesspools;

(iii) the height and slope of the roof above the upper most floor upon which human beings are to live or cooking operations are to be carried on;

(iv) the ventilation and the space to be left about the building to secure free circulation of air and to facilitate scavenging and for prevention of fire;

(v) the level and width of foundation, level of lowest floor, and stability of structure;

(vi) the number and height of the storeys of which the building may consist;

(vii) the means to be provided for egress from the building in case of fire;

(viii) any other matter affecting the ventilation or sanitation of the building; and

(ix) the conditions subject to which sanction for the construction or alteration of a well may be refused or granted, with a view to 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.221 prevent pollution of the water or danger to any person using the well;

(i) regulating, in any manner not specifically provided for in this Act, the erection of any enclosure, wall fence, tent awning or other structure, of whatsoever kind or nature, on any land within the limits of the 1 [municipal area]. B - Drains, privies, cesspools, etc.

(a) regulating in any manner not specifically provided for in this Act, the construction, alteration, maintenance, preservation, cleansing and repair of drains, ventilation shafts and pipes, water-closets, privies, latrines, cesspools and other drainage works;

(b) regulating or prohibiting the discharge into drains or deposit therein, of sewage, sullage polluted water and other offensive or obstructive matter;

(c) prescribing the size and nature of the works which owners or occupiers may be required to construct under Sections 192, 267 and 268, and the agency which shall or may be employed for executing such works. C - Extinction of fire

(a) prescribing the officer to whom and the place at which the outbreak of a fire shall be reported; and

(b) generally making provision for the procedure and precautions to be adopted by the public on the occasion of a fire and for any other thing relating to fires in respect of which provision is necessary. D - Scavenging

(a) prescribing the times and places at which receptacles of filth, rubbish or other offensive matter shall be in readiness for the removal of the contents by the municipal scavenging agency; 2

[(aa) regulating the work of house-scavenging by the customary sweepers and providing for grant of licences to them and the conditions of any such licence; and]

(b) making provision for any other matter relating to house-scavenging. 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 26 of 1964.222 E - Streets

(a) determining the information and plans to be furnished to the 1 [Municipality] under Section 203;

(b) permitting, prohibiting or regulating the use or occupation of any or all public streets or places by itinerant vendors, or by any person for the sale of articles, or for the exercise of any calling or for the setting up of any booth or stall, and providing for the levy of fees for such use or occupation;

(c) regulating the conditions on which permission may be given under Section 209 for projections over streets and drains and under Section 265 for the temporary occupation of streets. F - Markets, slaughter-house, sale of food, etc.

(a) prohibiting, subject to the provision of Section 241, use of any place as a slaughter-house, or as a market or shop for the sale of animals intended for human food or of meat or of fish, or as a market for the sale of fruit or vegetables, in default of a licence granted by the 2 [Municipality] or otherwise than in accordance

with the conditions of a licence so granted;

(b) prescribing the condition subject to which the circumstances in which and the areas or localities in respect of which, licences for such use may be granted, refused, suspended or withdrawn;

(c) providing for the inspection of, and regulation of conduct of business, in a place used as aforesaid, so as to secure cleanliness therein or minimize any injuries, offensive or dangerous effect arising or likely to arise therefrom;

(d) providing for the establishment, and except so far as provision may be made by bye-laws under sub-head

(c) for the regulation and inspection of markets and slaughter-houses, of livery stables, of encamping grounds of sarais, of flour-mills, of bakeries, of places for the manufacture, preparation or sale of specified articles of food or drink, or for keeping or exhibiting animals, for sale on hire or animals of which the produce is sold, and of places of public entertainment, or resort, and for the proper and cleanly conduct of business therein; 3 [(dd) prescribing the conditions subject to which, and the circumstances in which, and the areas or locality in respect of which, licences for the purposes of sub-head

(d) may be granted, refused, suspended or 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Added by U.P. Act No. 7 of 1949.223 withdrawn, and fixing the fees payable for such licences, and prohibiting the establishment of business places mentioned in sub-head (d) in default of licence granted by the 1 [Municipality] or otherwise than in accordance with the conditions of a licence so granted]; and

(e) in a 2 [municipal area], where a reasonable number of slaughter-house has been provided or licensed by the 3 [Municipality], controlling and regulating the admission within 4 [limits of the municipal area], for purposes of sale, of the flesh (other than cured or preserved meat) and any cattle, sheep, goats or swine slaughtered at a slaughter-house or place not maintained or licensed under this Act. NOTES Restriction - Whether reasonable.

- Whether a particular restriction on trade to the extent of its complete prohibition can be held to be "reasonable" within the meaning of clause (6) of Article 19 depends upon the nature of trade involved and the public interest that is intended to be served by such total restriction. The term "reasonable restriction" as used in Article 19(b) is highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal, just, fair, moral or

conscionable to the parts and circumstances brought before the Court. 5 Market. - "Market" means and includes any place or places for buying and selling, inter alia, grains where more than four stalls or shops are kept on any plot of land owned, by the same owner or owners, or where wholesale transaction by way of auction or sale of more than twenty maunds is carried on. It is thus clear that if on any plot, more than four stalls or shops are kept and they sell grains, they constitute a market within the bye-law 3(a). 6 G - Offensive Trades (a) except where and so far as is inconsistent with anything contained in the Indian Petroleum Act, 1899 (Act No. VIII of 1899) 7 or in rules made thereunder, prohibiting the use of any place, in default of a licence granted by the 8 [Municipality] or otherwise than in accordance with the conditions of a licence so granted, as a factory or other places of business,- 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Om Prakash v. State of U.P., (2004) 2 SAC 206. 6 Afzal Ullah v. State of U.P., (1964) 4 SCR 991. 7 See now the Petroleum Act, 1934. 8 Subs. by U.P. Act No. 12 of 1994.224

(j) for boiling or storing offal, blood, bones, guts or rags;

(ii) for storing hides, horns or skins;

(iii) for tanning;

(iv) for the manufacture of leather or leather goods;

(v) for dyeing;

(vi) for melting tallow or sulphur;

(vii) for burning or baking bricks, tiles, pottery or lime;

(viii) for soap making;

(ix) for oil boiling

(x) for storing, hay, straw, thatching grass, woof, coal or other dangerously inflammable material;

(xi) for storing petroleum or any inflammable oil or spirit;

(xii) for storing and pressing cotton and cotton refuse;

(xiii) for any other purpose if such use is likely to cause a public nuisance or involve risk of fire.

(b) prescribing (but not so to derogate from any power conferred on a 1 [Municipality] by Section 245) the circumstances in which and the areas or localities in respect of which licences may be granted, refused, suspended or withdrawn; and

(c) providing for the inspection and regulation of the conduct of business in a place used as aforesaid, so as to secure cleanliness therein or to minimize any injuries, offensive or dangerous effect arising or likely to arise therefrom. H - Public safety and

convenience

(a) prescribing for the standard weights and measures to be used within the 2 [municipal area], and providing for the inspection of the same;

(b) providing for the regulation or prohibition of any description of traffic in the streets where such regulation or prohibition appears to the 3 [Municipality] to be necessary;

(c) imposing the obligation of taking out licences on the proprietors of drivers of vehicles 4 [other than motor vehicles], boats or animals kept 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Added by U.P. Act No. 5 of 1935. 225 or plying for hire, or on person hiring themselves out for the purpose of carrying loads within the limits of the 1 [municipal area], and fixing the fees payable for such licences and the conditions on which they are to be granted and may be revoked;

(d) limiting the rates which may be demanded for the hire of a carriage, cart, boat or other conveyance, or of animals hired to carry loads, or for the services of persons hired to carry loads, and the loads to be carried by such conveyances, animals or persons when hired within the 2 [municipal area] for a period not exceeding twenty-four hours or for a service which would ordinarily be performed within twenty-four hours;

(e) prohibiting, in any specified street or area, the residing of public prostitutes and the keeping of brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel;

(f) for the regulation of the posting of bills and advertisements;

(g) fixing and regulating the use of places at which boats may be moored, loaded and unloaded, and prohibiting the mooring, loading and unloading of boats except at such places as may be prescribed by the 3 [Municipality];

(h) providing for the seizure and confiscation of ownerless animals staying within the limits of the 4 [municipal area];

(i) providing for the registration of 5 [animals];

(j) providing for the imposition of an annual fee for such registration;

(k) requiring that every registered 6 [animal], shall wear a collar to which shall be attached a token to be issued by the 7 [Municipality];

(l) providing that 8 [an animal], unless registered and wearing such token, may, if found in any public place, be destroyed or otherwise disposed of;

(m) prohibiting or regulating, with a view to promoting the public safety or convenience, any act which occasions or is likely to occasion a public 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 26 of 1964. 226 nuisance and for the prohibition or regulation or which no provision is made under this heading; 1 [(n) providing for the confinement, removal or destruction of animals]; 2 [(o) regulating the keeping and the tethering of cattle]. I - Sanitation and Prevention of Disease

(a) regulating or prohibiting for the purpose of preventing danger to the public health, the stalling or heading of horses, camels, cattle, swine, donkeys, sheep or goats;

(b) prescribing and regulating the construction, dimensions, ventilation, lighting, cleaning, drainage, and water supply of dairies and cattlesheds in the occupation of persons following the trades of dairymen or milk-sellers and providing for the inspection of milch-cattle and securing the cleanliness of milk stores, milk shops and vessels used by milk-sellers of buttermen for milk or butter;

(c) controlling and regulating the use and management of burial and burning grounds and fixing the fees to be charged where such grounds have been provided by the 3 [Municipality], and prescribing or prohibiting routes for the removal of corpses or burial or burning grounds;

(d) regulating sanitation and conservancy;

(e) declaring that no place, unless specially exempted, shall be used as a lodging-house, unless it has been duly licensed as such by the 4 [Municipality], and prescribing the conditions subject to which such licences may be granted, refused, suspended or withdrawn, and fixing the fees payable for such licenses;

(f) providing in default of a bye-law made under the preceding sub-head, for the registration and inspection of lodging house, the prevention of overcrowding, the promotion of cleanliness and ventilation, and prescribing the notices to be given and the precautions to be taken in the case of any infectious or contagious disease breaking out therein, and generally for the proper regulation of lodging houses;

(g) prohibiting the digging of excavations, cesspools, tanks or pits within specified areas except with the permission of the 5 [Municipality] and 1 Ins. by U.P. Act No. 7 of 1949. 2 Ins. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by

U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994.227 specifying the conditions subject to which such permission may be given;

(h) prohibiting or regulating with a view to sanitation or the prevention of disease, any act which occasions, or which is likely to occasion, a public nuisance and for the prohibition or regulation of which no provision is made under this heading. J - Miscellaneous

(a) prohibiting or regulating any act which occasions or is likely to occasion, a public nuisance for the prohibition or regulation of which no provision is made elsewhere by or under this Act;

(b) providing for the registration of births, deaths and marriages, and the taking of a census within the 1 [municipal area] and for compulsory supply of such information as may be necessary to make such registration or census effective;

(c) for the protection from injury or interference of anything within the 2 [municipal area] being the property of Government or of the 3 [Municipality], or being under the control of the 4 [Municipality];

(d) fixing any charges or fees, or any scale of charges or fees to be paid for house scavenging or the cleansing of latrines and privies under Section 196(c) or for any other municipal service or undertaking or to be paid under Section 293(1) or Section 294 of the Act, and prescribing the times at which such charges or fees shall be payable, and designating the person authorized to receive payment thereof;

(e) providing for the holding of fairs and industrial exhibitions within the 5 [municipal area] and under the control of the 6 [Municipality], and fixing the fees to be levied thereat;

(f) requiring and regulating the appointment by owners of buildings and lands in the 7 [municipal area] or person residing within or near the 8 [municipal area] to act as their agents for all or any of the purposes of this Act or of any rules or bye-law; 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994.228

(g) specifying the records and documents belonging to, or in the possession of, the 1 [Municipality] of which inspection may be made or copies given and the charges to be levied for inspection or copies of such records and documents, and regulating inspection and the giving of copies;

(h) providing for the granting of licences for the sale and for the

dispensing of medicinal drugs; 2 [(i) providing for the registration and control of midwives and dais publicity practicing their profession;] 3 [(j) providing for the establishment and maintenance of poor-houses and the conditions under which poor-houses may be recognized by the 4 [Municipality];] 5 [(k) providing for the establishment and maintenance of maternity centers and child-welfare clinics;

(l) providing for the establishment, maintenance and grants-in-aid to institutions of physical culture and supply of milk;

(m) providing for the installation and maintenance of radio-receiving stations;

(n) providing for the establishment and maintenance of baby-folds and rescue homes for women;

(o) providing for the removal of social disabilities of scheduled castes and backward classes;

(p) taking measures for the control of beggary;

(q) taking measures for the removal of prostitutes from a specified area to another specified area]; 6 [(r) providing the manner of allotment of land to the persons engaged traditionally in the

vocation of making earthen pottery. Explanation - A person shall be deemed to be engaged traditionally in such vocation if he belongs to such class of persons as may be notified by the State Government.] 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 5 of 1932. 3 Ins. by U.P. Act No. 1 of 1942. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 7 of 1949. 6 Ins. by U.P. Act No. 26 of 1995.

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(n) regulating or prohibiting the cutting or destroying of trees or shrubs, or the making of excavations or removal of soil or quarrying, and providing for the alteration, repair and proper maintenance of buildings and compounds, for the closing of roads and bye-paths and for the general protection of the surface land on the hillside where such byelaws appears to the 2 [Municipality] to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of land slides or of the formation of ravines or torrents, the protection of land against erosion, or the deposit thereon of sand, gravel or stones;

(o) prohibiting the lighting of fires in the top storey of a building which, by reason of its contiguity to other buildings, might be a source of danger to the latter in the event of a fire breaking out within it, and the walls of which storey do not exceed seven feet in height, or the placing of stands for lamps and candles in any

position which the 3 [Municipality] may deem to be dangerous to the public safety;

(p) regulating the rule of the road;

(q) rendering licences necessary within the 4 [municipal area] -

(i) for persons working as job porters for the conveyance of goods;

(ii) for animals, vehicles and other conveyances let out on hire for a day or part thereof; and

(iii) for persons impelling or carrying such vehicles and other conveyances;

(r) prescribing the conditions subject to which such licences may be granted, refused, suspended or withdrawn;

(s) regulating the charges to be made for the services of such job porters as aforesaid, and for the hire of such animals, vehicles and other conveyances and for the remuneration of persons who impel to carry such vehicles or conveyances. 1 Subs. by U.P. Act No. 26 of 1995. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994.230 I - Sanitation and Prevention of Disease

(i) rendering licences necessary for using premises within bazaars as stables or cow-houses or as accommodation for sheep, goats and fowls;

(j) preventing overcrowding in houses and inhabited sites; and J - Miscellaneous

(i) providing for the registration, generally or within particular months, of persons entering or leaving the 1 [municipal area].
NOTE Scope of the section. - This section only empowers the State Government to require the Municipality to make bye-laws consistent with the said Act and Rules framed thereunder, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the Municipal area. 2 From the statutory provision it is evident that it is for the Municipal Board to decide and lay down the by-laws for regulating the traffic in the public streets. The Chairman of the Board is not the same as the entire board; he is only one member of the Board and he alone cannot regulate the traffic.

299. Infringement Of Rules And Bye-Laws :-

(1) In making a rule the State Government, and in making a bye-law the 4 [Municipality] with the sanction of the State Government, may direct that a breach of it shall be punishable with fine which may extend to 5 [one thousand] rupees and when the breach is a

continuing breach, with a further fine which may extend to 6 [twenty five rupees] for every day after the date of the first conviction during which the offender is proved to have persisted in the offence.

(2) The 7 [Municipality] may with like sanction prescribe a similar penalty for the breach of a rule lawfully made under the United Provinces Municipalities Act, 1873 (Act XV of 1873) and still remaining in force.

300. Previous Publication Of Rules, Etc. Made By The State Government :-

(1) The power of the 8 [State Government] to make rules or regulations under this Chapter is subject to the condition of the rules or regulations being made after 1 Subs. by U.P. Act No. 12 of 1994. 2 Amil Rashid v. Nagar Panchayat, Ajuha, 1999 (90) RD 574. 3 Sir Shadi Lal Enterprises Ltd., Shamli, District Muzaffar Nagar v. Nagar Palika, Shamli, (2004) 2 SAC 172. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by ALO 1950.231 previous publication and of their not taking effect until they have been published in the 1 [Official Gazette].

(2) Any rule or regulation made by the 2 [State Government] may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more than one municipality as the 3 [State Government] directs.

301. Regulations And Bye-Laws To Be Published :-

(1) The power of the municipality to make bye-laws under Section 298 shall be subject to the condition of the bye-laws being made after previous publication.

(2) The regulations made under Section 297 and U.P. Primary Education Act, 1919 and the bye-laws made under Section 298 shall be published in the Official Gazette.]

301A. State Government May Modify Or Repeal Bye-Laws :-

(1) If, at any time, it appears to the State Government that any bye-law should be modified or repealed either wholly or in part, it shall cause its reasons for such opinion to be communicated to the municipality and prescribe reasonable period within which the municipality may make any representation with regard thereto which it shall think fit.

(2) After receipt and consideration of any such representation or, if in the

meantime no such representation is received, after the expiry of the prescribed period, the State Government may at any time, by notification in the Official Gazette, modify, or repeal such by-law either wholly or in part.

(3) The modification or repeal of a bye-law under sub-section (2) shall take effect from the date of the publication of the notification in the Official Gazette.] 1 Subs. by ALO 1950. 2 Subs. by ALO 1950. 3 Subs. by ALO 1950. 4 Subs. by Sec. 50 of U.P. Act No. 26 of 1995. 5 Ins. by U.P. Act No. 26 of 1995.

CHAPTER 10

PROCEDURE

302. Fixation Of Reasonable Time For Compliance :-

Where any notice issued under any section of this Act or under any rule or bye-law requires an act to be done for which no time is fixed by such section or rule or bye-law, the notice shall specify a reasonable time for doing the same, and it shall rest with the Court to determine whether the time so specified was a reasonable time within the meaning of this section.

303. Service Of Notice :-

(1) Every notice or bill issued or prepared under any section of this Act or under any rule or bye-law shall, unless it is in such section or rule or bye-law otherwise expressly provided, be served or presented, -

(a) by giving or tendering the notice or bill, or sending it by post, to the person to whom it is addressed; or

(b) if such person is not found, then by giving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering the notice or bill to some adult male member or servant of his family, or by causing the notice or bill to be fixed on some conspicuous part of the building or land (if any) to which the notice or bill relates.

(2) When a notice under this Act or under a rule or a bye-law is required or permitted by or under this Act, or under a rule or a bye-law to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either, -

(a) by giving or tendering the notice, or sending it by post, to the owners or occupier, or if there be more owners or occupiers than one, to any one of them; or

(b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be served upon the minor.

304. Method Of Giving Public Notice :-

Subject to the provision of this Act or of any rule, regulation or bye-law, in every case where public notice is to be given by 233 a 1 [Municipality], such notice shall be deemed to have been given if it is published in some local English or vernacular paper (if any) and posted upon the notice board to be exhibited for public information at the building in which the meetings of the 2 [Municipality] are ordinarily held.

305. Defective Form :-

No notice or bill shall be invalid for defect of form.

306. Disobedience To Public Notice Or Provision Of Act Applicable To The Public :-

Where, by this Act or a notice issued thereunder, the public is required to do or to refrain from doing anything, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction by a Magistrate to a fine not exceeding 1 [one thousand] rupees for every such failure, and, in the case of continuing breach, to a further fine which may extend to 2 [twenty-five] rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

307. Disobedience To Notice Issued To Individual :-

If a notice has been given under the provisions of his Act or under a rule or bye-law to a person requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do, or refrain from doing anything within a time specified in the notice, and if such a person fails to comply with such a notice, then -

(a) the 3 [Municipality] may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in the manner provided by Chapter VI; and further;

(b) the said person shall be liable on conviction before Magistrate, to a fine which may extend to 4 [one thousand] rupees, and in case of continuing breach, to a further fine which may extend to 5 [twenty-five rupees] for every day after the date of the first

conviction during which the offender is proved to have persisted in the offence.

308. Liability Of Occupier To Pay In Default Of Owner :-

(1) If the person to whom the notice mentioned in Section 307 has been given, is the owner of the property in respect of which it is given, the 6 [Municipality] may (whether any action or other proceeding has been brought or taken against such owner or not) require the person, if any, who occupies such property or a part thereof under such owner to pay 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 26 of 1964. 2 Subs. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 26 of 1964. 6 Subs. by U.P. Act No. 12 of 1994.234 to the 7 [Municipality] instead of to the owner, the rent payable by him in respect of such property, as it falls due, upto the amount recoverable from the owner under Section 307; and any such payment made by the occupier to the 8 [Municipality] shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under subsection (1), the 9 [Municipality] may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to name and address of the person to whom it is payable and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the 1 [Municipality] under this section shall be recoverable in the manner provided by Chapter VI.

309. Right Of Occupier To Execute Works In Default Of Owner :-

Whenever default is made by the owner of a building or land in the execution of a work required by or under this Act to be executed by him, the occupier of such building or land may, with the approval of the 2 [Municipality], cause such work to be executed, and the expenses thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent, from time to time, becoming due from him to such owner.

310. Procedure Upon Opposition To Execution By Occupier

:-

(1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may apply to a Magistrate.

(2) The Magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of Magistrates order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.235

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

311. Recovery Of Cost Of Work By The Occupier :-

When the occupier of a building or land has, in compliance with a notice issued under the provisions of this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

312. Recovery Of Expenses Of Removal By [Municipality] Under Sections 211, 263, 264, 265 And 278 :-

(1) The expenses incurred by the 2 [Municipality] in effecting any removal under Section 263 or 265 or, in the event of a written notice under Sections 211, 263, 264 or 278 not being complied with under Section 307, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice,

the balance shall be recoverable from the owner of the said materials in the manner provided by Chapter VI.

(2) If the expenses of removal are in any case paid before the materials are sold, the 3 [Municipality] shall restore the materials to the owner thereof, on his claiming the same at any time before they are sold or otherwise disposed of and on his paying all other expenses, if any, incurred by the 4 [Municipality] in respect thereof, or in respect of the intended sale or disposal thereof.

(3) If the materials are not claimed by the owner thereof, they shall be sold by auction or otherwise disposed of as the 5 [Municipality] thinks fit, as soon as conveniently may be after one month from the date of their removal, whether the expenses of the removal have in the meantime been paid or not; and the proceeds, if any, of the sale or other disposal shall, after defraying therefrom the costs of the sale or their disposal, and if necessary, of the removal, be paid to the credit of the municipal fund, and shall be the property of the 6 [Municipality].

313. Relief To Agents And Trustees :-

(1) When a person, by reason of his receiving, or being entitled to receive, the rent of immovable property as trustee or agent of a person or society would, under this Act, be found to discharge an obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless, he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994.236

(2) When an agent or trustee has claimed and established his right to relief under this section, the 7 [Municipality] may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf, or for the use of the owner, and should he fail to comply such notice, he shall be deemed to be personally liable to discharge such obligation.

314. Authority For Prosecution :-

Unless otherwise expressly provided, no Court shall take cognizance of any of the offences punishable under this Act (whereof a list is given in Schedule VIII for the purpose merely of easier reference) or under any rule or bye-law, except on the complaint of, or upon

information received from the 1 [Municipality] or some person authorized by the 1a [Municipality] by general or special order in this behalf.

315. Power To Compound Offences :-

(1) The Executive Officer or Medical Officer of Health of a 3 [Municipality] or in municipalities in which there is no Executive Officer or Medical Officer of Health, the president of a 4 [Municipality] may either before or after the institution of proceedings, compound an offence against this Act or a rule or bye-law, except an offence described in Sections 237(4), 242, 246, 247, 281, 285(5) or 295 : Provided that no offence shall be compoundable which is constituted by failure to comply with a written notice issued by or on behalf of the 5 [Municipality], unless the notice has been complied with, in so far as compliance is possible].

(2) When an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence so compounded.

(3) Sums paid by way of composition under this section shall be credited to the municipal fund.

316. Compensation For Damage To Municipal Property :-

If through an act, neglect or default on account whereof a person shall have incurred a penalty imposed by or under this Act any damage to the property of the 6 [Municipality] shall have been caused, the person incurring such penalty shall be liable to make good such damage as well as to pay such penalty; and the amount of damage shall, in case of dispute, be determined by the Magistrate by whom the person incurring such penalty is 7 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 1 a Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 26 of 1964. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 237 convicted, and on non-payment of such amount on demand the same shall be levied by distress, and such Magistrate shall issue his warrant accordingly.

317. Powers And Duties Of Police In Respect Of Offences And Assistance To Municipal Authorities :-

Every police officer shall give immediate information to the 7 [Municipality] of an offence coming to his knowledge which has

been committed against this Act or against an Act referred to in clause (b) of sub-section (1) of Section 114, or against any rule made under any of the said Acts and shall be bound to assist all members, officers and servants of the 8 [Municipality] in the exercise of their lawful authority. Appeals from order of 1 [Municipality] and suits against the 2 [Municipality]

318. Appeals From Order Of Municipality :-

(1) Any person aggrieved by any order or direction made by 4 [Municipality] under the powers conferred upon it by Sections 180(1), 186, 5 [204], 205(1), 208, 211, 6 [212], 222(6), 241(2), 245, 278 and 285 or under a bye-law made under Heading G of Section 298, may within thirty days from the date of such direction or order, exclusive of the time requisite for obtaining a copy thereof, appeal to such officer as the 7 [State Government] may appoint for the purpose of hearing such appeals or any of them, or failing such appointment, to the District Magistrate. 8 [* * *]

(2) The Appellate Authority may, if it thinks fit, extend the period allowed by sub-section (1) for appeal.

(3) No appeal shall be dismissed or allowed in part or whole unless reasonable opportunity of showing cause or being heard has been given to the parties.

319. Reference To High Court :-

(1) If on the hearing of an appeal under Section 318 any question as to the legality of the promotion, direction, notice or order arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up a statement of facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point, for the decision of the High Court. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 7 of 1949. 6 Ins. by U.P. Act No. 7 of 1949. 7 Subs. by ALO 1950. 8 Omitted by U.P. Act No. 12 of 1994.

(2) On a reference being made under sub-section (1), the subsequent proceedings in this case shall be as nearly as may be in conformity with the rules relating to reference to the High Court contained in Order XLVI of the First Schedule of the Code of Civil

Procedure, 1908 (Act V of 1908), or such other rules as are made by the High Court under Section 122 of that Code.

320. Costs :-

(1) The Court deciding the appeal shall have power to award costs at its discretion.

(2) Costs awarded under this section to the 9 [Municipality] shall be recoverable by the 10 [Municipality] as if they were arrears of a tax due from the appellant.

(3) If the 1 [Municipality] fails to pay any costs awarded to an appellant under this section within ten days after the date of the communication of the order for payment thereof, the Court awarding the costs may order the person having the custody of the balance of the municipal fund to pay the amount.

321. Finality Of Order Of Appellate Authority :-

(1) No order or direction referred to in Section 318 shall be questioned in any other manner or by any other authority than is provided therein.

(2) The order of the Appellate Authority confirming, setting aside or modifying any such order or direction shall be final : Provided that it shall be lawful for the Appellate Authority, upon application, and after giving notice to the other party, to review any order passed by him in appeal by a further order passed within three months from the date of his original order.

322. Suspension Of Orders Passed Under Section 318 Pending Decision Of Appeal Or Civil Suit Regarding The Subject Of Appeal Or Civil Suit :-

Where an order or direction referred to in Section 318 is subject to appeal and an appeal has been instituted against it, or a civil suit has been instituted in respect thereof, all proceedings to enforce such order and all prosecutions for a breach thereof, may, by order of the Appellate Authority or of the Civil Court, as the case may be, be suspended pending the decision of the appeal or the civil suit, and if such order is set aside on appeal or by the decision of the Civil Court disobedience thereof shall not be deemed to be an offence.]

323. Appeals From Certain Orders Of A Court :-

Every order of forfeiture under Section 201 and every order under Section 302 or Section 258 shall be subject to appeal to the next

superior court to that by which the order was passed, but shall not be otherwise open to appeal or revision. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 7 of 1949.

324. Disputes As To Compensation Payable By [Municipality] :-

(1) Should a dispute arise touching the amount of compensation which the 4 [Municipality] is required by this Act to pay, it shall be settled in such manner as the parties may agree, or in default of agreement, by the Collector upon a application made to him the 5 [Municipality] or the person claiming compensation.

(2) Any decision of the Collector awarding compensation shall be subject to a right of the applicant for compensation to require reference to District Judge in accordance with the procedure set forth in Section 18 of the Land Acquisition Act, 1894 (Act I of 1894).

(3) In cases in which compensation is claimed in respect of land, the Collector and the District Judge shall, as far as may be, observe the procedure prescribed by the said Act for proceedings in respect of compensation for the acquisition of land acquired for public purposes.

325. Decision Of Disputes Between Local Authorities :-

(1) Should a dispute arise between a 1 [Municipality] and any other local authority on any matter in which they are jointly interested, such dispute shall be referred to the 2 [State Government], whose decision shall be final.

(2) The 3 [State Government] may regulate by rule made under Section 296 the relation to be observed between 4 [Municipality] and other local authorities in any matter in which they are jointly interested.

326. Suits Against [Municipality] Or Its Officers :-

(1) No suit shall be instituted against a 6 [Municipality], or against a member, officer or servant of a 7 [Municipality], in respect of an act done or purporting to have been done in its or his official capacity, until the expiration of two months next after notice in writing has been in the case of a 8 [Municipality], left at its office, and, in case a member, officer or servant, delivered to him or left

at his office or place of abode, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by ALO 1950. 3 Subs. by ALO 1950. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994.240

(2) If the 9 [Municipality], member, officer or servant shall, before action is commenced, have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered, shall also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action.

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding. NOTE Inconvenience and defeated - Distinction. - In Haji Ahmad Raza and others v. Municipal Board, Allahabad 1 , the full bench distinguished the words "inconvenience" and "defeated" and held that in case a person is going to suffer some monetary loss which could be compensated by damages, he could recover the monetary loss in the same suit for inconvenience and it cannot be said that the purpose of suit would be defeated by postponement of suit. The crucial point for determination is whether the object of the suit would be "defeated" by giving of the notice or the postponement of the commencement of the suit. If the answer is in the affirmative, then no notice was necessary, but if it is in the negative then the suit must fail for want of notice.

326A. Civil Court Not To Grant Temporary Injunctions In Certain Cases :-

No Civil Court shall in the course of any suit grant any temporary injunction or make any interim order, - 3 [(a) restraining any person from exercising the powers or performing the functions or duties of a President or Vice-President of a 4 [Municipality] or by Chairman of a committee or sub-committee of a 5

[Municipality] or of a member, officer or servant of a 6 [Municipality] or of a committee or sub-committee of a 7 [Municipality] on the ground that such person has not been duly elected, nominated or appointed as 9 Subs. by U.P. Act No. 12 of 1994. 1 AIR 1952 All 711. 2 Added by U.P. Act No. 4 of 1934. 3 Subs. by U.P. Act No. 1 of 1955. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 241 such President, Vice-President, Chairman, member, officer or servant; or]

(b) restraining any person or persons or any 8 [Municipality] or committee or sub-committee of a 9 [Municipality] from holding any election, or from holding any election in any particular manner.] 8 Subs. by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 12 of 1994.

CHAPTER 11

SUPPLEMENTARY

327. Delegation Of Powers By The State Government :-

The 10 [State Government] may, by notification, delegate to the 11 [Prescribed Authority] in respect of any specified municipality or municipalities 1 [within his or its jurisdiction] any one or more of the powers vested in it by this Act, with the exception of the powers detailed in Schedule VII.

328. Facility For Inspection Of Minute Books And Assessment Lists :-

The minute books and assessment lists of the 2 [Municipality] shall be open to inspection free of charge by any tax-payer or elector under conditions to be prescribed by byelaw in this behalf.

329. Provision For Publicity Of Rules, Regulations And Bye-Laws :-

Books containing every rule, regulation and bye-law shall be kept in the municipal office and shall be open, during the ordinary hours of business, to inspection free of charge by any person and shall be for sale to the public at such office at reasonable price to be specified by bye-law in this behalf.

330. Mode Of Proof Of Municipal Records :-

A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of a 3 [Municipality], shall, if duly certified by the legal keeper thereof or other person authorized by bye-law in this behalf, be received as prima facie evidence of the existence of the entry or documents and shall be admitted as evidence of the matters and transaction therein recorded in every case, where, and to the same extent as, the original entry or document would if produced, have been admissible to prove such matters.

331. Restriction On The Summoning Of Municipal Servants

To Produce Documents :-

No municipal officer or servant shall in any legal proceeding to which a 4 [Municipality] is not a party be required to produce any register or document the contents of which can be proved under the preceding section by a certified copy, or to appear as a witness to prove the matters and transactions recorded therein unless by order of the Court made for special cause.

332. Inspection Of Municipal Works And Registers By Members :-

With the previous sanction of the 5 [President] any member of a 6 [Municipality] may inspect any work or institution, constructed or maintained, in whole or part, at the expense of 10 Subs. by ALO 1950. 11 Subs. by U.P. Act No. 7 of 1949. 1 Subs. by U.P. Act No. 7 of 1953. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 12 of 1994. 243 the 7 [Municipality], and any register, book, accounts or other document belonging to, or in the possession of, the 8 [Municipality].

333. Exercise By District Magistrate Of [Municipalities] Power Pending Establishment Of [Municipality] :-

When a new municipality is created under this Act, the District Magistrate, or other officer, or committee, or authority appointed by him in this behalf, may until a 3 [Municipality] is established, exercise the powers and perform the duties and functions of the 4 [Municipality], and, he or it shall, for the purposes, aforesaid be deemed to be the 5 [Municipality] : Provided always that the District Magistrate or such other officer, or committee, or authority shall, as early as possible, make preliminary arrangements for the holding of first elections and generally of expediting the assumption by the 6 [Municipality] of its duties when constituted. 7 [* * *]
NOTE Section 333 of the U.P. Municipalities Act makes provision for the transactional period and appoints the District Magistrate or other officer or committee or authority appointed by him in this behalf to exercise the powers and perform the duties and functions of the Board and he or its shall, for the purpose aforesaid, be deemed to be the board. Therefore, if the District Magistrate appoints any officer to exercise the powers and perform the duties and functions of the Board, such officer can act as the Board for all purposes of the U.P. Municipalities Act till an elected Board takes over for which Section 333 provides that the District Magistrate

shall take steps as early as possible for holding the election and of expediting the assumption by the Board of its duties when constituted.

333A. Consequences Of Declaration Of A Smaller Urban Area In Place Of A Transitional Area :-

Where a smaller urban area is declared in place of a transitional area, the following consequences shall follow as from the date of the declaration of the smaller urban area, - 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Second proviso omitted by U.P. Act No. 12 of 1994. 8 Indira Rani Devi v. Nagar Palika, Puranpur, (2000) 1 SAC 326 9 Subs. by U.P. Act No. 12 of 1994.

(i) all taxes, fees, licences, fines or penalty imposed, prescribed, or levied on the date immediately preceding the said date, by the Nagar Panchayat be deemed to have been imposed, prescribed or levied by the Municipal Council under or in accordance with the provisions of this Act and shall until modified or changed continue to be so realizable;

(ii) any expenditure incurred by the Nagar Panchayat, on or before the date immediately preceding the said date, from its fund, shall continue to be so incurred by the Municipal Council as if it was expenditure authorized by or under this Act;

(iii) all properties, including rights or benefits subsisting under any deed, contract, bond, security or choses-in-action, vested in the Nagar Panchayat, on the date immediately preceding the said date, shall be transferred to and vested in and ensure for the benefit of the Municipal Council;

(iv) all liabilities, whether arising out of contract or otherwise which have accrued against the Nagar Panchayat and are outstanding on the date immediately preceding the said date shall thereafter be the liabilities of the Municipal Council;

(v) the municipal fund of the Nagar Panchayat and all the proceeds of the unexpanded taxes, tolls, fees or fines levied or realized by it, shall be transferred to and form part of the municipal fund of the Municipal Council;

(vi) all legal proceedings commenced by or against the Nagar Panchayat and pending on the date immediately preceding the said date, shall be continued by or against the Municipal Council;

(vii) any officer or servant who, on the date immediately preceding the said date, was employed by the Nagar Panchayat, in full time employment shall be transferred to and become an officer or servant of the Municipal Council as if he has been appointed by it under the provisions of this Act; and

(viii) anything done or any action taken, including any appointment or delegation made, notification, order or direction issued, rule, regulation, form, bye-law or scheme framed, permit or licences granted or registration effected by the Nagar Panchayat, shall be deemed to have been done or taken by the Municipal Council and shall continue in force accordingly until superseded by anything done or any action taken by it.] NOTE Section 333-A of the U.P. Municipalities Act provides for consequences of establishment of a Municipality in place of town area or notified area. It merely 245 provides that the existing rights and liabilities of the Town Area Committee shall continue to be effective and it does not restrict the rights and obligations which arise from the establishment of a municipality.

333B. Consequences Of Constitution Of A Municipality By Excluding An Area From Existing Municipal Area :-

Where a municipality is constituted for a municipal area which has been excluded from an existing municipal area (hereinafter in this section referred to as undivided municipal area) the following consequences shall follow as from the date of

constitution (hereinafter in this section referred to as the said date) of the municipality, -

(a) all taxes, fees, licences, fines or penalties imposed, prescribed or levied, on the date immediately preceding the said date, by the municipality of the undivided municipal area be deemed to have been imposed, prescribed or levied by the newly constituted municipality under the provisions of this Act;

(b) any expenditure in respect of the area included in the municipal area of the newly constituted municipality incurred by the municipality of the undivided municipal area on or before this date immediately preceding this said date from its funds, shall continue to be so incurred by the newly constituted municipality as if it was expenditure authorized by or under this Act.

(c) all property within the municipal area of the newly constituted municipality, including the rights or benefits subsisting under any deed, contract, bond, security or chooses-in-action vested in the municipality of the undivided municipal area on the date immediately preceding the said date, shall be transferred to and vested in and enure for the benefit of the newly constituted municipality;

(d) all liabilities in respect of the municipal area of the newly constituted municipality, whether arising out of contract or otherwise which have accrued against the municipality of the undivided municipal area and are outstanding on the date immediately preceding the said date shall thereafter be the liabilities of the newly constituted municipality;

(e) such part of the fund of the municipality of undivided municipal area and the proceeds of any unexpended taxes, tolls, fees or fines levied or realized by the said municipality, as may be decided by the State Government, shall be transferred to and form part of the municipal fund of the newly constituted municipality;

(f) such of the servants of the municipality of the undivided municipal area as are transferred to the newly constituted municipality shall 1 Indira Rani Devi v. Nagar Palika, Puranpur, (2000) 1 SAC 326. 1 Subs. by U.P. Act No. 12 of 1994.246 become servants of the newly constituted municipality as if they had been appointed by the newly constituted municipality under and subject to the provisions of this Act.

(g) Anything done or any action taken, including any appointment or delegation made, notification, order or direction issued, rule, regulation, form bye-law or scheme framed, permit or licence granted or registration affected under the provisions of this Act in relation to or in respect of the municipal area of the newly constituted municipality shall be deemed to have been done or taken by the newly constituted municipality.]

334. Repeals And Savings :-

(1) The enactments specified in Schedule IX are repealed.

(2) Provided that this repeal shall not affect, -

(a) the validity of any appointment, or any grant or appropriation of money or property, or any tax or impost, made or imposed under any enactment hereby repealed; or

(b) the terms of remuneration, or right to pension, of any officer appointed before the commencement of this Act. NOTE Repeal. -

There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation 1 When the new Act contains a repealing section

mentioning the . Acts which its expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle *expressio unius (persone vel rei) est exclusio alterius*. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in *Garrett v. Bradley*.² The continuance of the existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot 1 See *Municipal Council, Palai v. T.J. Hoseph*, AIR 1963 SC1561; *Northern India Caterers (P) Ltd. v. State of Punjab*, AIR 1967 SC1581; *Municipal Corpn. Of Delhi v. Shiv Shanker*, (1971) 1 SCC 442 : 1971 SCC (Cri) 195 and *Ratan Lal Adukia v. Union of India*, (1989) 3 SCC 537 : AIR 1990 SC 104. 2 (1878) 3 AC 944 : (1874-80) All ER 648.247 stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred.

335. Saving As To Indian Railways Act, 1890 :-

Nothing in this Act shall affect any provisions of the Indian Railways Act, 1890 (Act NO. IX of 1890) 1 , or any rule made under that Act.

336. Validation Of Acts Done Before Commencement Of Act :-

All acts done before the commencement of this Act which could have been lawfully done if this Act had been in force shall be deemed to have been lawfully done. 336A Section 336A

337. Section 337 :-

338. Section 338 :-

339. Section 339 :-

340. Power To Remove Difficulties :-

(1) If any difficulty arises in giving effect to the provisions of this Act or, by reasons of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by a notified order make such provisions not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty.

(2) No order under sub-section (1) shall be made after the

expiration of the period of two years from commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994.

(3) The provisions made by any order under sub-section (1), shall have effect as if enacted in this Act and any such order may be made so as to be retrospective to any date not earlier than the date of the commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994.

(4) Every order made under sub-section (1) shall be laid as soon as may be, before both the Houses of the State Legislature and the provisions of sub-section (1) of Section 23-A of the Uttar Pradesh General Clauses Act, 1904, shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.]

341. Construction Of References :-

On and from the date of commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994, any reference to the municipal board or the Town Area Committee constituted under 3 See A.G. v. Moore, (1878) 3 Ex D 276; Ratan Lal, case, (1989) 3 SCC 537 :AIR 1990 SC 104 and R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335; 1992 SCC (L&S) 286 : AIR 1992 SC 81; State of M.P. v. Kedia Leather and Liquor Ltd., (2003) 7 SCC 389. 1 See now Railways Act, 1989. 2 Omitted by U.P. Act No. 26 of 1964. 3 Chapter XII containing Secs. 337 to 339 omitted by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 12 of 1994. 5 Ins. by U.P. Act No. 12 of 1994. 248 the United Provinces Town Areas Act, 1914 6 [or the Notified Area Committee constituted under Section 338] in any rules, regulations, bye-laws, statutory instruments, or in any other law for time being in force, or in any document or proceedings, shall be construed as reference 7 [to the Municipal Council for the Municipal Board or to the Nagar Panchayat for the Town Area Committee or the Notified Area Committee].

342. Provision Until The Constitution Of Municipalities :-

(1) Notwithstanding anything in this Act, all the powers, functions and duties of every Municipal Board, its President and Committees, Notified Area Committee and its Chairman, or Town Area Committee and its Chairman, as they stood immediately before the commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994 shall on such commencement vest in and be exercised, performed and discharged by the District Magistrate who shall in respect of Municipal Board, its President

and Committees, be deemed to be Municipal Council, its President and Committees and in respect of Notified Area Committee and its Chairman or Town Area Committee and its Chairman be deemed to be Nagar Panchayat and its Chairman].

(2) The District Magistrate may delegate all or any of the powers, functions and duties to any other person or authority.

(3) The District Magistrate in whom the powers, functions and duties of a Municipal Board and its President, or a Notified Area Committee and its Chairman or a Town Area Committee and its Chairman are vested under the Uttar Pradesh Municipalities, Notified Areas and Town Areas (Alpakalik Vyavastha) Adhiniyam, 1994, including the person or authority to whom the District Magistrate has delegated his powers, shall be deemed to be vested with such powers, functions and duties under the provisions of this section. 3 [(4) Notwithstanding anything in this section, the election to constitute the Municipal Councils and the Nagar Panchayats shall be held within a period of one and half years from the date of commencement of the Uttar Pradesh Urban Local Self Government Laws (Amendment) Act, 1994 in accordance with the provisions of this Act as amended by the said Act and on the constitution of the Municipal Council or the Nagar Panchayat, as the case may be, the provisions of sub-sections (1), (2) and (3) shall cease to have effect.]] 6 Subs. by U.P. Act No. 26 of 1995, Sec.51(a). 7 Subs. by U.P. Act No. 26 of 1995, Sec. 51(b), for the words "respectively to the Municipal Council or to the Nagar Panchayat". 1 Ins. by U.P. Act No. 12 of 1994. 2 Subs. by Sec. 52 of U.P. Act No. 26 of 1995. 3 Subs. by Sec. 52 of U.P. Act No. 26 of 1995.

SCHEDULE 1

SCHEDULE I

THE POWERS AND FUNCTIONS OF A 1 [MUNICIPALITY] [Section 50(e)(ii), 111(1) and 112(1)(a)] Sections Power or duty Remarks 1 2 3 13 2 [* * *] 37 3 [* * *] 40(1)(a) 4 [* * *] 43 5 [* * *] 6 [44-A To elect a President in a casual vacancy] 47-A To pass a vote of non-confidence in the President 52 To require the President to furnish report, etc. 54 To elect, or accept the resignation of a VicePresident 57 7 [To appoint and employ and executive officer and a medical officer of health.] 58 8] 9 [To dismiss, remove or otherwise punish] an executive officer and recommend the transfer of a medical officer or health.] 59 To appoint a person to officiate as executive officer 10 [in cases where the vacancy exceeds two months.] May be delegated 1 Subs. by U.P. Act No. 12 of 1994. 2 Omitted by U.P. Act No. 7 of 1953. 3 Omitted by U.P. Act No. 7 of 1949. 4 Omitted by U.P. Act No. 7 of 1949. 5 Omitted by U.P. Act No. 7 of 1949. 6 Subs. by U.P. Act No. 5 of 1932. 7 Subs. by U.P. Act No. 5 of 1932. 8 Subs. by U.P. Act No. 5 of 1932. 9 Subs. by U.P. Act No. 26 of 1964. 10 Added by U.P. Act No. 5 of 1932.250 61 1 [To entertain appeals from orders of the executive officer or the medical officer of health.] 63 2 [To

require the executive officer or the medical officer of health in furnish returns, etc.] 66 To appoint a secretary 67 3 [To dismiss, remove or otherwise punish] a secretary. 68 To appoint Civil Engineer, Assistant Civil Engineer, Electrical Engineer, Assistant Electrical Engineer, Water-works Engineer, Assistant Water-works Engineer, Electrical and Water-works Engineer, Assistant Electrical and Water-works Engineer, Qualified Overseer or Sub-Overseer, Secretary, Superintendent or Lady Superintendent of Education 69 4 [To dismiss, remove or otherwise punish] any officer appointed under Section 68. 70(a) To prohibit the employment of temporary servants for any particular work 71 5 [To determine the number and salaries of the boards permanent staff.] 72 To appoint one person to discharge the duties of two or more officers 74 and 76(2) 6 [* * *] 79(2) To establish a provident fund. 79(3), (4) and

(5) To grant a gratuity, or compassionate allowance or to grant or purchase an annuity 81 To institute a suit against a member 1 Subs. by U.P. Act No. 5 of 1932. 2 Subs. by U.P. Act No. 5 of 1932. 3 Subs. by U.P. Act No. 26 of 1964. 4 Subs. by U.P. Act No. 26 of 1964. 5 Subs. by U.P. Act No. 5 of 1932. 6 Omitted by U.P. Act No. 5 of 1932.251 82(2)(f) To fix the amount up to which a member may be interested in occasional sales to the 1 [Municipality.] 94(6) To modify or cancel a resolution 96(1) 2 [To sanction contracts for which budget provision does not exist or involving a value or amount exceeding ten thousand rupees in the case of a contract by a Municipal Council and three thousand rupees in the case of a contract by a Nagar Panchayat.] 96(2) To empower a committee or officer or servant of the 3 [Municipality] to sanction other contracts. 96(3) To empower engineer to sanction contracts. 97(2)(b) 4 [* * *] 99 To sanction a budget and to vary or alter a budget. 104(1) To appoint and remove members of committees. 104(2) To establish and appoint the members of advisory committees. 105 To appoint persons other than members of the 5 [Municipality] to committees. 106 To fill up vacancies in committees. 107(1) To appoint the 6 [President] of any committee. 109 To call for returns, etc., from a committee. 110 To appoint joint committees and to vary or rescind any written instrument by virtue of which any joint committee has been appointed. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of 1994. 4 Omitted by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 7 of 1949.252 112 To delegate powers of duties conferred or imposed on a 1 [Municipality]. 115 To invest or place any portion of the municipal fund in deposit. 117 To request the 2 [State Government] to acquire land. 118 To undertake the management or control of property entrusted to it. 119 To manage, control and administer, and hold in trust the funds of public institutions. 124 To transfer any property vested in the 3 [Municipality]. 4 [May be delegated if the transfer relates to movable property.] 125 To make compensation out of the municipal fund. 128 to 137 To take any action relating to a tax. 141 To cause an assessment list to be prepared and to appoint a person to make the assessment list. May be delegated. 143(3) To hear and decide objections, or to delegate the power to hear and decide objections. May be delegated. 147(1) To amend an assessment list. May be delegated. 156 To permit compounding for taxes. 157(1) and (2) To exempt from taxation. 186 5 [* * *] 187 To establish and maintain a fire brigade. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by ALO 1950 for "Provincial Government". 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 7 of 1949. 5 Omitted. by U.P. Act No. 26 of 1964.253 189 1 [* * *] 190 2 [* * *] 196(1) and

(b) By public notice to undertake the house scavenging or cleansing of latrines or privies, and to relinquish undertaking. 197(2) To pass orders on an application for the exclusion of a house from a notice under Section 196(a). May be delegated.

211 3 [* * *] 212-A To control and regulate the construction of any building or street and drains beyond 4 [municipal area] up to a distance of two miles. 217(1) (a) To give a name to a street. 219 To make, alter, divert or close a public street, to provide building sites thereon, to take steps to acquire land for such purposes and to sell or dispose of land so acquired. 221 To declare a street a public street. 222(1) and

(3) To define "The regular line of the street". 224 To construct and alter water works. 237(1) To fix premises for the slaughter of animals for sale. 238 To fix premises for the slaughter of animals not intended for sale or slaughter for religious purpose, and to prohibit such slaughter elsewhere. 245(1) 5 [* * *] 1 Omitted by U.P. Act No. 26 of 1964. 2 Omitted by U.P. Act No. 26 of 1964. 3 Omitted by U.P. Act No. 26 of 1964. 4 Subs. by Sec. 53(a) of U.P. Act No. 26 of 1995, for "municipal limits". 5 Omitted by U.P. Act No. 26 of 1964. 254 250(1) To require the muzzling of dogs.

(proviso) To Direct that the section shall not apply to vehicles proceeding at not more than a walking pace. 257(1) To direct that roofs and external walls shall not be made of inflammable materials without the 1 [Municipalities] consent. 259 To prohibit the stacking or collecting of inflammable materials, etc. 269 To require the removal of a nuisance from tanks and the like, when such removal involves the 2 [Municipality] acquiring or providing land. 273(1) (b) and (c) To appoint places for disposal of offensive matter and rubbish and to issue directions as to the time, manner and conditions of removal thereof. 275(3) To prescribe fees for the disposal of dead bodies of animals. 278 3 [* * *] 282 To prohibit any cultivation, use of manure or irrigation injurious to health. 285 To provide or close, or give permission for the making of, burning and burial grounds, to except private burial places from a public notice, and to give permission to use an unrecognized burial or burning ground. 286 To set apart bathing and washing places, to prescribe conditions for the use of such places and to prohibit bathing and washing at other places. 290(2) To sanction execution of water-works or a work under Sections 192, 267 and 168 at the charge of the municipal fund. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 26 of 1964. 255 290(3) To transfer of the 1 [Municipalities] interest in appliances appertaining to a water or drainage work to the owner of a building or land. 297 To make regulations. 298 To make bye-laws. 299 To direct that the breach of bye-laws shall be punishable with fine. General Any power, duty or function which any rule requires to be exercise, performed or discharged by the 2 [Municipality] itself by means of resolution. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994.

SCHEDULE 2

SCHEDULE II

SCHEDULED POWERS OF EXECUTIVE OFFICERS [Section 60(1)(d) and 61(1)(a)]

Sections	Nature of powers or duties	Remarks	1	2	3	75
75	To appoint permanent	3 [* * *] inferior staff.				
76	To dismiss, remove or otherwise punish	5 [* * *] inferior staff.				
79(1)	To pay leave allowances to officer or servant.					
142	To give public notice of the place where an assessment list may be inspected.					
143	To give public notice of the time fixed for considering valuation and assessments and to give notice to owners or occupiers of property.					
143(2)	To receive objections to valuation and assessments.					
147(2)	To give notice to persons interested in an alteration proposed in an assessment list of the date on which the alteration will be made.					
148(1)	To receive notice of building newly built, rebuilt or enlarged.					
150(2)	To exercise the option of levying the tax from the lessor.					
151(1) and (2)	To remit					

or refund a tax in case of a building, tenement or land remaining vacant and unproductive of rent. 152(1) To receive notice of the re-occupation of a building or land. 158 To call for information effecting liability to 3 The word "and" omitted 4 Subs. by U.P. Act No. 26 of 1964. 5 The word "and" omitted. 257 taxation. 166 To present bills for taxes and other dues. 168 To cause a notice of a demand to be served. 169 To issue a distress warrant. 172(1) and (2) To sell goods distrained. 172(3) To receive applications for a refund and to make a refund. 173 To apply to a Magistrate for the issue of a warrant. 176 To sue for a demand. 178(1) To receive a notice of the intention to erect, reerect or make a material alteration in a building, etc. 179(1) To determine when information regarding such notice is satisfactory. 179(2) To require plans, specification and further information. 1 [186 To direct by notice that the erection, re-erection or alteration of a building, etc., shall be stopped or that a building, etc., be altered or demolished. Appealable. 189 To construct drains. 190 To alter and discontinue municipal drains.] 191(1) To give permission and to prescribe conditions for the connection of private drains with municipal drains. 191(2) To require that a drain made in contravention of bye-law or of the terms of permission or without permission shall be closed, etc. 192(1) To enforce a drainage connection with a public drain. Appealable. 1 Added by U.P. Act No. 26 of 1964. 258 193 To receive applications, to call for objections, to issue orders thereon, to construct drains and recover cost of construction and compensation. Appeal lies against an order recorded under sub-section (3) 194 To give permission for diversion of drain and to prescribe conditions for such diversion. Appealable. 196(c) and (d) With the consent of an occupier, undertake house-scavenging or the removal of nightsoil or other offensive matter or rubbish and relinquish such undertaking. 201(1) To complain to a Magistrate of the negligence of a customary sweeper. 202(1) To complain to a Magistrate of the failure of an agriculturist to provide for proper house scavenging. 203 2 [* * *] 204 3 [To receive application for permission to lay out and make a street.] 209 To give permission for projections. Appeal lies from orders refusing permission 1 [211 To issue a notice for the removal or alteration of a projection. Appealable.] 213 To give permission for erection and repair of building, etc., and to issue orders regarding hoarding, etc. 214 To require hedges and trees to be trimmed. 215 To remove, and recover the expense of removal of, or to issue a notice requiring the removal of an obstruction caused by fallen house, etc. 216 To require the provision to trough and pipes for rain water. 2 Omitted by U.P. Act No. 7 of 1953. 3 Subs. by U.P. Act No. 7 of 1953. 1 Added by U.P. Act No. 26 of 1964. 259 217(1)(b) and (c) To affix the name of street or a house number to a building or to require the owner or occupier to affix a number plate, and to cause or require such names and number to be altered. 218 To attach posts and brackets to buildings for lamps, telegraph and telephone wires, etc. 220 To give permission for the use or occupation of a public street or place. 224 To provide fencing and lighting during repairs of public street, etc. 225(1) To require private wells, etc., to be cleansed. 225(2) To require a person to desist from using a private well, etc., or to close or fence the same. Appealable. 227 To require the removal or closing of drains, latrines, etc., near a source of water-supply. Appealable. 229 To supply water by agreement. 230 To charge for the supply of water. Appealable. 236 To remove or otherwise deal with unauthorized building over drains, etc., or to issue notice for the removal of such buildings, etc. 240 To authorize an officer to seize flesh brought within the municipal limits in contravention of a bye-law and to issue orders as to the disposal of such flesh. 244(1) To seize articles exposed for sale which appear to be unfit for the consumption of man and drugs suspected to being adulterated or spent; and to produce such drugs before a Magistrate. 1 [245(1) To

issue a notice relating offensive trades. Appealable.] 249 To authorize a person to destroy or confine dogs suspected to be suffering from rabies, etc. 1 Added by U.P. Act No. 26 of 1964.260 250(2) To authorize persons to destroy or confine unmuzzled dogs. 256 To give permission for the use of public land for halting animals or vehicles. 257(2) To require the removal of a roof and wall, if inflammable. Appealable. 258 To search for inflammable material and to seize any quantity in excess of the quantity permitted. 260 To issue notices regarding dangerous quarrying and to put up hoarding and fences to prevent imminent danger. 261 To give permission for the displacing of pavements, etc., and to recover expenses incurred by the 2 [Municipality] by reason of such displacement etc. 263 To require by notice buildings, etc., in a dangerous or ruinous state to be demolished or repaired, or wells, tanks, etc., to be repaired and enclosed, and to take immediate action where the danger is imminent. Appeal lies against an order to repair or enclose a tank 264 To require unoccupied building or land which occasions a public nuisance to be secured or enclosed. Appealable. 265 To give written permission for the temporary obstruction of a street and to remove any obstruction from a street and to recover the cost of removal. 266 To give permission for the removal of earth, etc., from open spaces. 267 To require provision, alteration, removal, closing, cleansing and screening of private drains, cess-pools, dust-bins, latrines, etc. Appeal lies against an order under clause (a) of sub-section (1) requiring an owner or occupier to close 2 Subs. by U.P. Act No. 12 of 1994.261 or remove or under clause (b) of sub-section (1) to provide a latrine, urinal, water-closet, drains, cesspool, dust-bin or other receptacle for filth, sullagewater rubbish or refuse. 268 To require the provision and cleansing of latrines and urinals for factories, etc. (in part) To require the cleansing, repairing, covering, filling up or draining off of wells, tanks, etc. Appealable 270 To inspect drains, etc., and to cause the ground to be opened. 271 To require the cleansing of filthy buildings or lands. 273(1)(a) To provide receptacles and places for the temporary deposit of offensive matters. 275(1) To arrange for the disposal of dead bodies of animals. 275(3) (in part) To charge and recover fees for such disposal. 276 To give permission for, and to prescribe conditions regarding the discharging of sewage, etc. 277 To enter and inspect a building and to direct that a building be disinfected, etc. 1 [278 To issue orders regarding buildings unfit for human habitation. Appealable] 280 To remove to hospital a cholera or small-pox patient etc. 1 Added by U.P. Act No. 26 of 1964.262 283 To require an owner or occupier to clear away noxious vegetation. 284(1) To require that excavation, etc., made in contravention of bye-laws or the conditions of a permission, shall be filled up or shall be drained. 291 To apply to the collector to recover rent of land. 293 To charge fees for the use or occupation of immovable property vested in, or entrusted to the management of the 2 [Municipality] and to levy or recover such charge. 294 To charge fees for licences, sanction and to permission. 307 To cause a work to be executed and to recover the expenses thereof. 308 To require an occupier to pay rent to a 3 [Municipality] instead of to the defaulting owner, and to require an occupier to furnish information regarding the rent payable by him, etc. 309 To approve the execution of a work by an occupier. 312 To recover the cost of removal by sale of materials removed, to restore the materials to the owner, under certain conditions, or to sell them when not claimed by the owner. 313(2) To give notice to a trustee or an agent to apply moneys received on behalf of an owner to the discharge of obligations of the owner. 314 To institute prosecution by making complaints and giving information, and to authorize other persons to make such complaints and give such information. 317 To receive information from a police officer. 2 Subs. by U.P. Act No. 12 of 1994. 3 Subs. by U.P. Act No. 12 of

1994.

SCHEDULE 3

SCHEDULE III

NOTICE OF PROPOSALS TO IMPOSE TAX [Sub-section (3) of Section 131] Notice is hereby given to the inhabitants of the 1 [municipal area] of that the 2 [Municipality] desires to impose the tax, rate, 3 [* * *] or cess (as the case may be) described in the proposals appended in ** lieu of the tax known as the Any inhabitant of the 4 [municipal area] objecting to the proposals or rules appended hereto may, within a fortnight from date of this notice, send his objections in writing to the 5 [Municipality]. PROPOSALS The proposals framed by the 6 [Municipality] under sub-section (1) of Section 131 are to be appended here. ** To be inserted if the tax is to be substituted for any existing tax. RULES The rules prepared by the 1 [Municipality] under sub-section (2) of Section 131 are to be appended here. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 The words "toll octroi" omitted by U.P. Act No. 26 of 1995, Sec. 53(b). 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 1 Subs. by U.P. Act No. 12 of 1994.

SCHEDULE 4

SCHEDULE IV

FORM OF NOTICE OF DEMAND [Section 168] To, A, B residing at Take notice that the municipal area of demands from to sum of due from on account of (here describe the property, occupation, circumstance or thing in respect of which the sum is leviable) leviable under for the period of commencing on the day of 20..... and ending on the day of 20....., and that if, within fifteen days from the service of this notice, the said sum is not paid into the municipal office at or sufficient cause for non-payment is not shown to the satisfaction of the municipal area, a warrant of distress will be issued for the recovery of the same with costs. Dated this day of 20..... (Signed) By order of the municipal area of

SCHEDULE 5

SCHEDULE V

FORM OF WARRANT [See sub-section (1) of Section 169] (Here insert the name of the officer charged with the execution of the warrant). Whereas A, B of has not paid and has not shown satisfactory cause for the non-payment of the sum of due for the liability* mentioned in the margin for the period commencing on the day of 20....., and ending with the day of 20....., and leviable under : * Here describe the liability. And whereas fifteen days have elapsed since the service on him of notice of demand for the same : This is to command you to distrain, subject to the provisions of Section 171 of the United Provinces Municipalities Act, 1916 the goods and chattels of the said A, B, to the amount of being the amount due from him as follows : Rs. P. On account of the said liability For service of notice And forthwith to certify to me together with this warrant all particulars of the good seized by you thereunder. Dated this day of 20..... (Signed) 1 [President] or other officer [See Section 169(2)] Note - It shall not be necessary to execute the warrant if the defaulter makes full

payment to you before removal of his goods. 1 Subs. by U.P. Act No. 7 of 1949.

SCHEDULE 6

SCHEDULE VI

FORM OF INVENTORY OF GOODS DISTRAINED AND NOTICE OF SALE [See sub-section (4) of Section 171] To, A, B, residing at take notice that I have this day seized the goods and chattels specified in the inventory beneath this, for the value of due of the liability** mentioned in the margin for the period commencing with the day of 20....., and ending with the day of 20....., together with Rs. due for service of notice of demand and that unless within 5 days from the date of the service of this notice you pay into the municipal office at the said amount together with the cost of recovery, otherwise the said and chattels will be sold. Dated this day of 20..... (Signature of officer executing the warrant) Inventory
** Here state particulars of goods and chattels seized.

SCHEDULE 7

SCHEDULE VII

POWERS OF THE 1 [STATE GOVERNMENT] THAT MAY NOT BE DELEGATED [See Section 327] Section Powers of duties 1 2 2 [3(1) To specify with limits any area to be a transitional area or a smaller urban area, as the case may be. 3(2) To include or exclude any area in or from a transitional area or a smaller urban area, as the case may be.] 8(1)(n) 3 [To declare expenditure or anything to be an appropriate charge on the municipal fund.] 4 [9(a)] To prescribe by notification the number of members of 5 [Municipality] whom may be elected. 6 [9(b) To nominate the members to the Nagar Panchayat or to the Municipal Council, as the case may be.] 10 7 [* * *] 12(3) 8 [* * *] 9 [13-A To appoint date or dates for general election to a Municipality.] 10 [13-D] To remove a disqualification under (a) and (b) of this section. 13-I 11 [* * *] 22 12 [* * *] 1 Subs. by ALO 1950. 2 Subs. by U.P. Act No. 26 of 1995, Sec. 53(c). 3 Subs. by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 26 of 1995, Sec. 53(c)(ii). 5 Subs. by U.P. Act No. 12 of 1994. 6 Ins. by U.P. Act No. 26 of 1995, Sec. 53(c)(iii). 7 Omitted by U.P. Act No. 26 of 1995, Sec. 53(c)(iv). 8 Omitted by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 26 of 1995, Sec. 53(c)(v). 10 Subs. by U.P. Act No. 7 of 1953. 11 Omitted by U.P. Act No. 12 of 1994. 12 Omitted by U.P. Act No. 26 of 1964. 268 30 To dissolve 1 [* * *] a 2 [Municipality] for a specified period. 31 3 [* * *] 34(2) To rescind or modify an order passed under this section by the 4 [Prescribed Authority] or the District Magistrate with respect to a city. 35 (in part) 5 [* * *] To fix a period for the performance of duty and if the duty is not performed within the period so fixed, to appoint the District Magistrate to perform it and to direct that the expenses of performing it shall be paid by the 6 [Municipality]. 38(4) 7 [* * *] 40(1) 8 [To remove a member of a municipality.] 40(2) 9 [* * *] 40(3) 10 [To remove a member in certain specified circumstances.] 40(5) 11 [* * *] 12 [40(6) To warn 13 [* * *] a member as a punishment.] 41(4) To declare a member removed by the State Government to be no longer ineligible for further election 14 [* * *] or nomination. 43(2) & 43(3) 15 [* * *] 43-B 16 [* * *] 1 Omitted by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Omitted by U.P. Act No. 12 of 1994. 4 Subs. by U.P. Act No. 7 of 1953. 5 Omitted by U.P. Act No. 12 of 1994. 6 Subs. by U.P. Act No. 12 of 1994. 7 Omitted by U.P. Act No. 5 of 1932. 8 Subs. by U.P. Act No. 12 of 1994. 9 Omitted by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 26 of 1964. 11 Omitted by U.P. Act No. 12 of 1994. 12 Added by U.P. Act No. 26 of 1964. 13 Omitted by U.P. Act No. 12 of 1994. 14 Omitted by U.P. Act No. 7 of

1953. 15 Omitted by U.P. Act No. 26 of 1964. 16 Omitted by U.P. Act No. 26 of 1964.269 44 1 [* * *] 44-A(2). 44-A(3) and 44-A(4) 2 [* * *] 45 3 [* * *] 47-A 4 [* * *] 48 5 [To remove 6 [* * *] a President] 55(3) 7 [To remove 8 [* * *] a Vice-President] 57 9 [To approve the appointment] of an Executive Officer and a Medical Officer of Health. 10 [57(2-A) To nominate Account Officers and to lay down the terms and conditions of their service.] 58 11 [To entertain and pass orders on an appeal by an Executive Officer against his dismissal, removal or other punishment, to transfer a Medical Officer of Health from one 12 [Municipality] to another.] 58(3) and (4) 13 [* * *] 14 [59(3) 15 [To approve the appointment] of an officiating Executive Officer if the term of appointment exceeds two months]. 16 [60-A To direct that in any municipality the Medical Officer of Health and not the Executive Officer shall exercise certain powers conferred on the Executive Officer.] 1 Omitted by U.P. Act No. 5 of 1932. 2 Omitted by U.P. Act No. 7 of 1949. 3 Omitted by U.P. Act No. 7 of 1949. 4 Omitted by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1964. 6 Omitted by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 26 of 1964. 8 Omitted by U.P. Act No. 12 of 1994. 9 Subs. by U.P. Act No. 26 of 1964. 10 Ins. by U.P. Act No. 7 of 1953. 11 Subs. by U.P. Act No. 26 of 1964. 12 Subs. by U.P. Act No. 12 of 1994. 13 Omitted by U.P. Act No. 5 of 1932. 14 Ins. by U.P. Act No. 5 of 1932. 15 Subs. by U.P. Act No. 26 of 1964. 16 Ins. by U.P. Act No. 5 of 1932.270 1 [60-B To direct that in any municipality the principal officer of the Electrical, Public Works and Water-works Departments 2 [and municipal Museum] shall with reference to their departments exercise the powers under clause (e) of sub-section (1) of Section 60]. 3 [65 In default of his appointment by a 4 [Municipality] to appoint a person to be an Executive Officer or to act as Executive Officer and to fix the salary, contributions to provident fund or pension and other conditions appertaining to such appointment]. 65(1) and (3) 5 [* * *] 73 and 74 6 [* * *] 79(4) and (5) To sanction grant of compassionate allowance or grant or purchase of annuity by 7 [Municipality]. 99(2) To direct submission of budgets to specified Officers. 102 To direct that budgets of specified 8 [Municipalities] shall be subject to sanction. 9 [104(1) To require a 10 [Municipality] to appoint committees.] 110 To require the appointment of joint committees. 11 [114-A To permit a 12 [Municipality] to raise loans]. 115(2) To determine the amount of security of a banker. 116 To make reservation regarding property ordinarily vesting in 13 [Municipality]. 1 Ins. by U.P. Act No. 7 of 1953. 2 Ins. by U.P. Act No. 26 of 1964. 3 Ins. by U.P. Act No. 5 of 1932. 4 Subs. by U.P. Act No. 12 of 1994. 5 Omitted by U.P. Act No. 5 of 1932. 6 Omitted by U.P. Act No. 26 of 1964. 7 Subs. by U.P. Act No. 12 of 1994. 8 Subs. by U.P. Act No. 12 of 1994. 9 Ins. by U.P. Act No. 7 of 1949. 10 Subs. by U.P. Act No. 12 of 1994. 11 Ins. by U.P. Act No. 7 of 1949. 12 Subs. by U.P. Act No. 12 of 1994. 13 Subs. by U.P. Act No. 12 of 1994.271 117 To acquire land for a 1 [Municipality] under the Land Acquisition Act. 122(1) To declare by notification what portion of the property and liabilities of a 2 [Municipality] shall be transferred to another local authority, when a portion of the municipal area is placed under the control of such local authority. 3 [122(2) To declare what portion of a property and liabilities of a 4 [Municipality] shall be transferred to the State Government when a local area if 5 [excluded from the transitional area or the smaller urban area, as the case may be] and is not immediately placed under the control of another local authority.] 122(4) To decide in any case falling under sub-section (1) or (2), that it is undesirable to transfer any portion of municipal funds or liabilities. 124(2) To sanction the transfer to Government of any property vested in 6 [Municipality]. 126 To provide police protection at fairs, etc., and to determine the portion of the charges payable by a 7 [Municipality]. 8 [130-A To require a 9 [Municipality] to impose a tax or to vary its

rates.] 133(2) To sanction, refuse to sanction or return for further consideration proposals for taxation under Section 128, sub-section (1), clauses (i) to (xii) submitted by a city, or proposal for taxation received from any 10 [Municipality] under Section 128, sub-section (1), clause (xiii). 135(2) To notify the imposition of a tax sanctioned by the State Government. 1 Subs. by U.P. Act No. 12 of 1994. 2 Subs. by U.P. Act No. 12 of 1994. 3 Ins. by U.P. Act No. 7 of 1949. 4 Subs. by U.P. Act No. 12 of 1994. 5 Subs. by U.P. Act No. 26 of 1995, Sec. 53(c)(vi), for "excluded from the municipality". 6 Subs. by U.P. Act No. 12 of 1994. 7 Subs. by U.P. Act No. 12 of 1994. 8 Ins. by U.P. Act No. 7 of 1949. 9 Subs. by U.P. Act No. 12 of 1994. 10 Subs. by U.P. Act No. 12 of 1994. 272 137(1) To require a 1 [Municipality] to remove a defect in or relating to a tax. 137(2) To suspend, abolish or reduce a tax. 157(3) To exempt from taxation. 160(1) To empower an officer to hear appeals against taxation. 2 [180-A To approve construction of places of public entertainment.] 279 and 280 To notify infectious diseases. 296 (in part) To make rules except rules under clauses (a), (b) and (c) of Section 153 applicable to municipalities other than cities. 318 To appoint an officer to hear appeals from certain orders of 3 [Municipality]. 327 To delegate powers. 4 [336-A To direct that during the transition period, the Act shall have effect subject to certain adaptations, alterations and modifications.] 337 5 [* * *] 338(1)(e) 6 [* * *] 338(2) 7 [* * *] 339 8 [* * *] 1 Subs. by U.P. Act No. 12 of 1994. 2 Ins. by U.P. Act No. 7 of 1949. 3 Subs. by U.P. Act No. 12 of 1994. 4 Ins. by U.P. Act No. 7 of 1953. 5 Omitted by U.P. Act No. 12 of 1994. 6 Omitted by U.P. Act No. 12 of 1994. 7 Omitted by U.P. Act No. 12 of 1994. 8 Omitted by U.P. Act No. 12 of 1994.

SCHEDULE 8

SCHEDULE VIII

LIST OF OFFENCES [Section 314] Sections Description of offences Fine or other punishment that may be imposed 1 2 3 148(2) Failure to report for entry in property assessment list a new or altered building Rupees 50 or ten times tax payable for three months. 152(2) Failure to report re-occupation of vacant building Rupees 50 or ten times tax due since occupation. 155 2 [* * *] 185 Illegal erection or alteration of building. Rupees 1,000 subject to a minimum of Rs. 250. 191(2) Illegal construction or alteration of a drain connection. Rupees 50. 201(2) Negligence by customary sweeper Rupees 10. 207 Illegal making of street. Rupees 500. 210 Construction of unauthorized projection over street or drain. Rupees 1,000 subject to a minimum of Rupees 250. 213(3) Failure to obtain permission for, and to safeguard dangerous tree-cutting and building operation. Rupees 500 and rupees 10 for each day that offence is repeated after conviction. 217(3) Improper interference with street names and house numbers. Rupees 250 223(2) Interference with arrangements made during street repair, etc. Rupees 50 237(4) Slaughter on unlicensed premises of animals for sale. Rupees 20 per animal 1 Subs. by U.P. Act No. 26 of 1964. 2 Omitted by U.P. Act No. 26 of 1995, Sec. 53(d). 274 242 Improper feeding of animal kept for dairy purposes or used for food. Rupees 50 245 Failure to obey a notice prohibiting or regulating the use of premises for an offensive trade. Rupees 200 and Rupees 40 for each day that offence is repeated after conviction. 246 Loitering and soliciting for immoral purposes. Rupees 50 247(2) Disobedience to Magistrate's order prohibiting use of houses as brothel. Rupees 25 per day. 248 Importunate begging Rupees 50 252 Neglect of the rules of the road. Rupees 10 253 Driving vehicles without proper lights. Rupees 20 254 Failure to remove elephant, etc. to safe distance. Rupees 20 255(1) Allowing cattle to stray or be tethered. Rupees 250 256 Unauthorised use of municipal land as halting place. Rupees 100 and Rs. 10 for each day that offence is

repeated after conviction. 257(3) Unauthorised erection or continuance of inflammable construction. Rupees 25 and Rs. 10 for each day that offence is repeated after conviction. 261(1) Unauthorised interference with payments and other municipal property. Rupees 1,000 262 Dangerous discharge of firearms or fireworks and indulgence in dangerous games. Rupees 20 265 Obstruction of streets. Rupees 500 and Rs. 10 for each day that offence is repeated after conviction. 275 266 Unauthorized digging on public land. Rupees 500 and Rs. 10 for each day that offence is repeated after conviction. 272 Failure of owner or occupier to remove offensive matter. Rupees 50 and Rs. 5 for each day that offence is repeated after conviction. 274 Improper disposal by owner or occupier of rubbish, nightsoil, etc. Rupees 250 275(2) Failure to dispose of dead animals. Rupees 10 276 Improper discharge of sewage into a street or drain. Rupees 250 279 Failure to give information of cholera, small-pox, etc. Rupees 50 281 Doing certain acts while suffering from infectious disorder. Rupees 50 285(5) Burial or burning of corpses in a place not recognized as a burial or burning ground. Rupees 500 295 Obstruction to municipal employees. Rupees 1,000 or imprisonment for six months, or both. 299 Contravention of rules or bye-laws to the breach of which penalty is attached. Any sum not exceeding Rupees 1,000 as prescribed, and upto Rs. 25 for each day that offence is repeated after conviction. 306 Disobedience to public notice or provision of the Act applicable to the public. 1,000 and Rs. 25 for each day that offence is repeated after conviction. 307 Disobedience to notice issued to individual. Rupees 1,000 and Rs. 25 for each day that offence is repeated after conviction. 310(3) Refusal by occupier to allow owner to take action required by notice Rupees 25 for each day of refusal.]

SCHEDULE 9

SCHEDULE IX

REPEALED ENACTMENTS [Section 334(1)] Year No. Short title or subject Acts of the
 1 [State Government] 1900 I The United Provinces Municipalities Act. 1901 V The United Provinces Municipalities (Amendment) Act. 1907 I The United Provinces Municipalities (Amendment) Act. 1891 I The United Provinces Water-Works Act. 1895 II The United Provinces Water-Works (Amendment) Act. 1901 I The United Provinces Water-Works (Amendment) Act. 1908 I The United Provinces Water-Works (Amendment) Act. 1892 I The United Provinces Lodging House Act. 1894 III The United Provinces Sewage and Drainage Act 1 Subs. by ALO 1950.