

(2010) 01 P&H CK 0162
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1079 of 2007

ABB Limited

APPELLANT

Vs

Municipal Corporation Faridabad

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 346

Citation : (2010) 1 PLR 606 : (2010) 3 RCR(Civil) 629

Hon'ble Judges : K.Kannan, J

Judgement

K. Kannan, J.

1 The 2nd respondent through the impugned memos dated 11.10.2006 and 08.01.2007 sought for deposit of External Development Charges (EDC), amounting to Rs.1,16,58,775/ for approving of the building plan submitted by the petitioner. This demand was purported to be in consonance with the Directive of the Haryana Urban Development Authority on the subject of fixation of EDC in cases of release/change of land dues dated 15.01.2002. The petitioner's contention was that the municipality does not have a power to levy EDC in cases where the building is situate within the Faridabad Municipal Corporation limits and where the petitioner had applied for sanction for additional construction in the existing construction complex of the petitioner's factory. The justification for the respondents' action as raised in the written statement was that the Municipal Corporation, Faridabad had revised the zoning plan of the new industrial township (NIT), wherein the floor area ratio (FAR) had been raised from 75% to 125% and in view of the fact that the Municipal Corporation had upped its town level service with regard to the enhanced FAR in the industrial area of NIT, the EDC had been decided to be recovered between 75% to 125% at the time of approval of building plans.

2 The source of the power to refuse the zoning plan of the area within the jurisdiction of the Municipal Corporation was referred as falling within the section 346 of the Haryana Municipal Corporation Act, 1994 . The contention in defence

was that the petitioner's site fell within the jurisdiction of the municipal Committee NIT, Faridabad in the year 1969, later it fell within the jurisdiction of Faridabad Complex administration from 1971 to 1994 and later it fell within the jurisdiction of the Municipal Corporation Act. All the building plans were required to be approved under the Faridabad Complex administration (Regulation and Development) Act, 1971 and presently the approval was required to be done under the Haryana Municipal Corporation Act, 1994 .

3 According to the respondent, the industrial plot of the petitioner Company had been allotted in the year 1965 by the Government and it did not attract the provisions of EDC at that time. However, in view of the increase in FAR and the revision of the zoning plan, it became possible for the petitioner to increase the construction area within the existing land and the Corporation, therefore, became entitled to recover the difference of EDC as per the rates calculated by HUDA, Faridabad Urban Area for augmentation on town level service for the enhanced FAR. The reference to payment of EDC itself comes through a provision in Haryana Developmental regulation of Urban Areas Act of 1975.

4 The charges were also leviable under the Punjab Scheduled Roads and controlled Areas (Restriction of Unregulated Development) Act. The controlled areas which are notified are areas outside the municipal area. The said Act itself was passed only to regulate unauthorized construction along the highways immediately outside the radius of the municipal area. No part of the construction which the petitioner was making fell within the controlled area and therefore, there is no provision for invoking the applicability of the said act for collection of EDC.

5 As regard the contention raised by the Corporation making the increase in far as the justification for levy of EDC, the contention of the petitioner is that it would arise only if the petitioner had applied for sub division of the property. On the other hand, the petitioner was only raising an additional construction adjoining the existing structure and no sub division had been sought for. The sub division itself will arise only in a situation where there is a transfer of property and purchaser has to obtain a mutation after the sub division to effectuate any construction or exercise any independent control over such property.

6 The impugned notices are challenged on 4 grounds: (i) the orders themselves are nonspeaking and no reasons are given explaining the basis for the levy. If the order itself is completely lacking in particulars, it cannot be supported through reasoning in the affidavit. It has been laid down by the Hon''ble supreme Court in Mohinder Singh Gill Versus Chief Election Commissioner AIR 1978 Supreme Court 463 that a justification for an order that the impugned in a writ petition should be done from the reading of the order itself which ought to contain the reasons and it cannot be supported by the pleadings in the writ petition. (ii) The impugned notices are cryptic in merely demanding the payment of EDC within the stipulated period of 7 days and warning the petitioner that the application for sanction would be rejected if the amount was not paid. There is

no clue in the impugned notices as to how the amount has been arrived at. (iii) There is no reference about the source of power or the particular provision which makes possible for the Corporation to make such levy. The impugned notices suffer from a fundamental vice of complete lack of information as to how the levy is made. A tall demand as high as over a crore ought to be rooted on statutory authority and that authority does not seem spelt out by the impugned notices. (iv) Even apart from lack of particulars in the impugned notices, the challenge by the petitioner is also on account of the fact that the Haryana Municipal Corporation Act does not make provision for collection for EDC.

7 The learned counsel appearing for the respondents seeks to support the levy by reference to Chapter XX of the Haryana Municipal Corporation Act that provides for notification of controlled areas and Sec.421 (1) of the said Act provides that any notification granted already under the Faridabad Complex Regulation and Development Act, 1971 shall continue to apply in so far as it is not inconsistent with the provisions of the Municipal Corporation Act. The learned counsel for the respondent would contend that such a notification had already been issued under the Faridabad complex Regulation and Development Act, 1971 including the NIT area as falling within the controlled area and by virtue of the power granted under the municipal Corporation Act to levy EDC could be levied by framing appropriate bye laws relating to buildings. The learned counsel for the respondent further refers to Chapter XXII of the Municipal Corporation Act that spells out the power to frame bye laws relating to buildings under Sec.392 of the Act which in paragraph D refers to the form of notice of erection of a building or execution of any work and the fee in respect of the same.

8 If the power vests with the Corporation to levy a fee, it should again be stated to arise either by a specific provision under the principal Act or by the rules that stipulate the basis for such a levy. I have not been shown through any relevant provisions the basis for such a levy. It is one thing to point out that a Corporation has a power to make suitable bye laws and to make levies but quite another to seek to recover some monies, the basis of which simply is not spelt out anywhere. The payment of EDC does not find expressed under any of the provisions of the Haryana Municipal Corporation Act. If the power to levy a fee through a bye law referred to in Sec.392 ParaD referring to bye laws relating to buildings must be construed as prescribing a fee, then there ought to be a specific expression of EDC in the bye laws. We have also seen that the EDC themselves arise only in case of sub division or when development of property is to be undertaken in a controlled area to which the provisions of the 1975 act applied.

9 The approval of the building plans for the existing structure at all times have been applied for and obtained over a period of time on 14.11.1969, 18.12.1982 and 19.10.1992 and on all such occasions, EDC have never been collected. If increase in FAR on the concomitant enhancement to municipal services would justify an imposition of new charges, the Corporation could obtain the same only

with reference to specific power granted under the Act.

10 The impugned memos are quashed holding that the Corporation is not entitled to recover the sums sought through the notices. They shall be at liberty to refer to specific provisions and power to levy EDC, if at all tenable after giving an opportunity to the petitioner to show cause against such levy as regards the quantum and its mode of calculation and then take appropriate action in accordance with law. The writ petition is allowed with cost assessed at Rs.10,000/.