

(1995) 07 KAR CK 0041
In the Karnataka High Court
Case No : Writ Petition No. 41816 of 1993

A.V. Laxman

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Karnataka Town and Country Planning Act, 1961 — Section 15, 16, 18, 81 B

Citation : (1995) ILR (Kar) 2331 : (1995) 6 KarLJ 620

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : Ashok B. Patil, for the Appellant; Shimoga Subbanna, HCGP for R-1 and H.S. Jois, for K. Sridhar, for the Respondent

Judgement

Sadashiva, J.—Whether respondents 2 and 3 have the authority of law to impose tax/fees/cess, in respect of Cauvery Water Supply III Stage Scheme and to levy surcharge in respect of ring road being constructed by Bangalore Development Authority (for short BDA), to issue Commencement Certificate u/s 15 of the Karnataka Town and Country Planning Act 1961 (for short "the Planning Act") pursuant to the order made u/s 14 of the Planning Act, according permission to change in land use? is the Question in controversy in this Petition.

2. The petitioner is the owner of 1 acre 4 guntas of land in Sy.No. 22, Jakkasandra village, Begur Hobli, Bangalore South Taluk, having been reconveyed by the BDA under an Agreement dated 24.2.1979. The BDA by order dated 9.8.1979 sanctioned permission for the development of the said land for industrial purposes for construction of a factory subject to certain conditions. It is stated by the petitioner that accordingly he was using the said land for industrial purpose. That in the years 1989 and 1991, the petitioner applied to the third respondent for permission for change in land use of the aforesaid land from industrial use to residential use, as similar permission was granted in favour of his father A.V. Venkatesh and others in respect of the adjoining land in the same survey number and also for the reason that the residential premises have been

built in the area surrounding the land in question. That, on the recommendation of the third respondent, the first respondent by order dated 12.6.1993 (Annexure-G) sanctioned permission for change in land use from industrial purpose to residential purpose subject to payment of revised fee for change in land use and further subject to the terms and conditions that may be imposed by the BDA.

3. Pursuant to the sanction by the first respondent, the third respondent issued three notices dated 10.3.1993 as per Annexures, H, J and K demanding payment of certain charges, fees and surcharge etc. Annexure-H is a demand notice issued in Form No. 38 under Rule 37A(2) of the Karnataka Planning Authority Rules, 1965 (for short "the Planning Rules") calling upon the petitioner to pay a sum of Rs. 17,816/- towards the fee payable in respect of the increase in the value of the land on account of change in land use as prescribed by Section 18(a) of the Planning Act. By Annexure-J the petitioner was called upon to pay a sum of Rs. 2,227/- towards inspection fee and Annexure-K is another notice, calling upon the petitioner to pay a sum of Rs. 1,65,095/- towards cess/contribution in respect of Cauvery Water Supply Scheme HI Stage and another sum of Rs. 1,65,095/- towards ring road surcharge. The petitioner paid the amounts demanded vide Annexures H and J, respectively. However he did not pay the Cauvery Water Supply Scheme III Stage cess and ring road charges as demanded but presented this Writ Petition for a declaration that the demand for contribution of Rs. 1.50 lakhs per acre towards Cauvery Water Supply Scheme III Stage and the ring road surcharge at Rs. 1.50 lakhs per acre, is without the authority of law and to quash - (i) Notice dated 10.9.1993 made in No. BDA/NA/Yo/SA 1242 (2)/93-94 (Annexure-K), (ii) Government Order dated 13.1.1993 made in No. HUD 364 MNX 92 (Annexure-S); and (iii) the Resolution of the BDA dated 19.10.1992 at Subject No. 354/92 (Annexure-T), on the ground that there is no legal sanction for the Planning Authority to levy water cess/tax/fee/contribution towards Cauvery Water Supply Scheme III Stage and ring road surcharge.

4. Sri Ashok B. Patil, learned Counsel appearing for the petitioner has contended that the Planning Authority did not have the authority to impose any tax/fees/cess of whatsoever nature either as water tax/cess or ring road surcharge, in the absence of any statutory power to do so under the Planning Act or under the Bangalore Development Authority Act, 1976 (for short "the BDA Act"). He further contended that even under provisions of the Bangalore Water Supply and Sewerage Board Act, there is no provision to levy any impost in respect of any capital work. The Board is empowered only to levy fees for maintenance of the Water Scheme. Under these circumstances the Planning Authority could not levy, by way of fees or cess of whatsoever nature, in respect of capital work and such levy amounts to tax and the same is violative of Article 265 of the Constitution of India, as the Planning Authority or the State has no legal sanction to levy such tax. Sri Patil further contended that the levy of water cess and the ring road surcharge in whatever name it could be called is not authorised by law as there

is no provision under the Planning Act empowering the Planning Authority to levy and collect the aforesaid charges for issue of Commencement Certificate u/s 15 of the Planning Act.

5. It was contended by the Planning Authority that the Bangalore Water Supply and Sewerage Board has undertaken Cauvery Water Supply Scheme III Stage to provide water supply to the Bangalore City at a cost of Rs. 240/crores. It was originally thought that the Scheme would be completed with the aid of the World Bank and as the Water Board did not get World Bank's aid, a scheme was formulated to mobilise alternative financial resources, according to which, the Government has decided that the BDA shall contribute a sum of Rs. 30 crores to the Water Board to complete Cauvery Water Supply Scheme III Stage. Pursuant to the aforesaid policy, the Government passed an order dated 18.1.1993 as per Annexure-S revising the rate of water tax in respect of the permission for change in land use, Group Housing Scheme and the formation of private lay-outs by the Co-operative Housing Societies. Accordingly the BDA levied the aforesaid water tax/cess in respect of permissions granted for change in land use, Group Housing Scheme and private lay-outs that would be formed by Co-operative Housing Societies. It was further contended by the Planning Authority that the formation of ring road is one of the most essential features of the development of Bangalore City. The Metropolitan City of Bangalore is a fast developing City and it requires amenities like ring road etc., for the development of the City. On account of construction of various buildings, apartments, multi-dwelling houses, there is bound to be pressure on the existing road and in order to ease out the pressure on the existing roads, the formation of ring roads are envisaged and the private developer since benefitted is liable to pay towards the cost of construction of the ring road. The material portion of the statement of objections filed on 20.12.1994, by the Planning Authority reads as follows:

"2) It is submitted that the execution of Cauvery Water Scheme involves huge expenditure in terms of crores of rupees. As per Government Order dated 20.7.1987, for execution of Cauvery III Stage, it was estimated at Rs. 240/crores and out of which, Rupees thirty crores are required to be contributed by the B.D.A. However, while executing the scheme there is bound to be escalation.

3) In order to raise huge amount required for execution of the scheme it is absolutely necessary that persons who are forming the lay-out, or constructing group housing, are liable to contribute for execution of the same, as it would ultimately benefit the users of execution of this scheme. Ultimately it benefits the persons to whom the petitioner is going to sell the apartments. There is no justification in not contributing, as the petitioner intends to make profit by developing the land by way of constructing apartments.

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5) Similarly the B.D.A. is empowered to levy Ring Road surcharge. The Metropolitan City of Bangalore is fast developing and it requires amenities like

Ring Road etc., for the development of the City. On account of construction of various buildings, apartments, multi-dwelling houses, there is bound to be pressure on the existing roads. In order to ease-out the pressure on the existing road, the formation of Ring Roads are envisaged and every private land developer who wants to develop the land, make profit by selling the multi strayed buildings or other constructions, cannot wriggle out his liability to make contribution for the development of Ring Road. The formation of ring road comes near the land or not, is not a criteria for levying ring road surcharge.

6) Without these levy, the B.D.A. is not in a position to execute the schemes which ultimately benefits the users of the land, namely, the purchaser of multi-dwelling houses or sites etc. The petitioner who is developing the land by making change of land use, is bound to make contribution."

There is no averment in the statement of objections of the respondents as regards the statutory provision by which the Planning Authority was empowered to levy water tax/cess/fee and ring road surcharge. In this context, it is pertinent to examine the provisions of the Planning Act. Section 4C deals with the constitution of the Planning Authority for the local area comprising the City of Bangalore. The BDA is the Planning Authority as per Section 2(7)(a)(i) of the Planning Act; Section 9 deals with the preparation of Outline Development Plan; Section 10 deals with the declaration of intention of making Outline Development Plan; Section 11 deals with the Power of entry for carrying out surveys for preparing Outline Development Plan, Section 13 deals with the approval of Outline Development Plan. Section 14 as amended by Karnataka Act 2/91 and Karnataka Act 17/91 deals with the enforcement of the Outline Development Plan and Regulations; Section 14-A deals with the change of land use from the Outline Development Plan, Section 15 deals with the permission for development of building or land; Section 16 deals with the obligation to purchase the land on refusal of permission in certain cases; Section 17 deals with sanction for sub-division of plot or lay-out of private street, Section 18 provides for recovery of a fee in certain cases of permission for change in the use of land or building, contents approval, enforcement and revision of Comprehensive Development plan. The material portions of the aforesaid provisions are extracted hereunder:

"14. ENFORCEMENT OF THE OUTLIVE DEVELOPMENT PLAN AND THE REGULATIONS.-

(1) On and from the date on which a declaration of intention to prepare an outline is published under Sub-section (1) Section 10, every land use, every change in land use and every development in the area covered by the plan shall subject to Section 14A conform to the provisions of the Act, the outline development plan and the regulations, as finally approved by the State Government under Sub-section (3) of Section 13.

(2) No such change in land use or development as is referred to in Sub-section (1) shall be made except with the written permission of the Planning Authority

which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed.

xxx xxx xxx 14A. CHANGE OF LAND USE FROM THE OUTLINE DEVELOPMENT PLAN.-

(1) At any time after the date on which the Outline Development Plan for an area comes into operation, the Planning Authority may, with the previous approval of the State Government allow such changes in the land use or development from the Outline Development Plan as may be necessitated by topographical cartographical or other errors and omissions, or due to failure to fully indicate the details in the plan or changes arising out of the implementation of the proposals in Outline Development Plan or the circumstances prevailing at any particular time, by the enforcement of the plan :

Provided that .-

- (a) all changes are in public interest;
- (b) the changes proposed do not contravene any of the provisions of this Act or any other law governing planning, development or use of land within the local planning area; and
- (c) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public within a period of not less than fifteen days from the date of publication as may be specified by the Planning Authority.

(2) The provisions of Sub-sections (2) and (3) of Section 14 shall apply mutatis and mutandis to the change in land use or development from the Outline Development Plan.

15. PERMISSION FOR DEVELOPMENT OF BUILDING OR LAND.-

(1) On receipt of the application for permission u/s 14, the Planning Authority shall furnish to the applicant a written acknowledgement of its receipt and after such inquiry as may be necessary either grant or refuse a commencement certificate:

Provided that such certificate may be granted subject to such general or special conditions as the State Government may, by order made in this behalf, direct.

(2) If the Planning Authority does not communicate its decision to the applicant within three months from the date of such acknowledgment, such certificate shall be deemed to have been granted to the applicant.

Provided that the land use, change in land use or the development for which permission was sought for is in conformity with the Outline Development Plan and the regulation finally approved under Sub-section (3) of Section 13.

(3) Subject to the provisions of Section 16, no compensation shall be payable for

the refusal of or the insertion or imposition of condition in the commencement certificate.

(4) If any person does any work on or makes any use of, any property in contravention of Section 14 or of Sub-section (1) of this Section, the Planning Authority may direct such person by notice in writing, to stop any such work in progress or discontinue any such use; and may, after making an enquiry in the prescribed manner, remove or pull down any such work and restore the land to its original condition or, as the case may be, take any measure to stop such use.

(5) Any expenses incurred by the Planning Authority under Sub-section (4) shall be a sum due to such Authority under this Act from the person in default or from the owner of the land.

(6) Any person aggrieved by the decision of the planning Authority under Sub-section (1) or Sub-section 4 may, within thirty days from the date of such decision, appeal to such authority as may be prescribed.

(7) The prescribed authority may, after giving a reasonable opportunity of being heard to the appellant and the Planning Authority, pass such orders as it deems fit, as far as may be, within four months from the date of receipt of the appeal.

EXPLANATION.- The power to grant necessary permission under this Section for a change of user of land shall include the power to grant permission for the retention on land of any building or work constructed or carried out thereon before the date of the publication of the declaration of intention to prepare an Outline Development Plan under Sub-section (1) of Section 10 or for the continuance of any use of land instituted before the said date.

18. RECOVERY OF A FEE IN CERTAIN CASES OF PERMISSION FOR CHANGE IN THE USE OF LAND OR BUILDING.-

(1) Where permission for change in the use or development of any land or building is granted u/s 15 or Section 16 and such change or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change in use or development.

(2) Any person aggrieved by the levy of fee under Sub-section (1), may within such period as may be prescribed, appeal to the District Court having jurisdiction on the ground that the change or development is not capable of yielding a better income to the owner. The decision of the District Court on such appeal shall be final.

24. ENFORCEMENT OF THE COMPREHENSIVE DEVELOPMENT PLAN.

(1) The provisions of Section 14, Section 14A, Section 15 and Section 16 shall apply mutatis mutandis to the enforcement of the Comprehensive Development Plan.

(2) If, as a result of the Comprehensive Development Plan superseding the Outline Development Plan, a plot of land or property is favourably affected, a fee as prescribed in Section 18 shall be payable before permission is given to the change in use of land or building or development of the property. If, however, a plot of land or property is adversely affected by such supersessions, the fee if any, levied u/s 18 in respect of the plot shall be refunded.

(3) Any person aggrieved by the levy of a fee under Sub-section (2), may within such period as may be prescribed, appeal to the District Court having jurisdiction on the ground that the change or development is not capable of yielding a better income to the owner. The decision of the District Court on such appeal shall be final."

It is clear from the aforesaid provisions, that on and from the date on which a declaration of intention to prepare Outline Development Plan was published, every land use, every change in land use and every development of the area covered by the plan shall be subject to Section 14A conform to the provisions of the Planning Act and Outline Development Plan and no such change in land use or development shall be made except with the written permission of the Planning Authority which shall be contained in a Commencement Certificate, and to obtain such permission the owner shall make an application and the Planning Authority shall communicate its decision within three months from the date of acknowledgement of the receipt of the application for permission u/s 14 of the Planning Act and in default of such communication, such Certificate shall be deemed to have been granted to the applicant. Where on account of permission granted u/s 15 of the Planning Act, the change or development is capable of yielding better income to the owner, the Planning Authority may levy a prescribed fee not exceeding 1/3rd of the estimated increase in the value of the land or building. Similarly the Planning Authority is also empowered to levy fee on the land or property which is favourably affected on account of supersession of the Outline Development Plan as prescribed in Section 18 and a right is also conferred on the applicant to claim for deduction if the property or land is adversely affected on account of such supersession. Except Section 18, no other provision is provided in the Planning Act for levy of any fee for issue of Commencement Certificate pursuant to the order for change in land use. Rule 37A deals with the fees to be levied in certain cases for the purpose of Sub-section (1) of Section 18. Rule 35 deals with the form of Commencement Certificate granted u/s 15(1) of the Planning Act.

6. The aforesaid provisions are included in Chapters III and IV of the Planning Act. Apart from the said provisions, there are no other provisions under the Planning Act which deal with the grant of permission for change in land use in the area covered either by Outline Development Plan or Comprehensive Development Plan. The Comprehensive Development Plan for the local planning area of City of Bangalore has been approved and it is in force. Any fee that may be levied in respect of permission for change in land use or development on

account of its effect by such change of land use or development shall be u/s 18 only and not under any other provisions of the Planning Act, By virtue of Section 18 such fee may be levied not exceeding 1/3rd of the estimated increase in the value of the land or building in the prescribed manner for permitting such change and use or development. The manner of levying fee is also prescribed by Rule 37A of the Planning Rules and that fee has been admittedly paid by the petitioner pursuant to Annexure-H. The Planning Authority has not stated any provision of law under which the demand for water cess and for ring road surcharge was made under Annexure-K. Even in the statement of objections filed by the Planning Authority, it is not stated under what provision of law the Planning Authority is entitled to demand from the Petitioner the so called water cess or tax or fee, as the case may be, towards Cauvery Water Supply Scheme III Stage and ring road surcharge respectively. The contention of the third respondent that the Bangalore Development Authority is required to contribute Rs. 30 crores for completion of Cauvery Water Supply Scheme III Stage and in order to mobilise the said resources, the aforesaid levy was imposed which is based only on the Government Order dated 13.1.1993 and not on any statutory provisions. Similarly the contention of the third respondent that in a growing metropolitan City like Bangalore formation of ring roads are necessary in order to ease-out traffic for which the BDA is entitled to collect ring road surcharge, is also not supported by any statutory provisions. It is well settled principle of law that no tax, or duty or cess can be levied or collected except by authority of law. Any fees or cess or whatever impost that is levied by virtue of an executive order, is invalid in law, as the same do not have the sanction of law. The Planning Authority, as stated above, would not support its action of levy and collection of the water cess and ring road surcharge under any statutory provision, though derive support from the executive order.

7. From the catena of Decisions cited by Sri A.B. Patil, the learned Counsel appearing for the Petitioner, it is clear that there is no generic difference between tax and fee and the taxing power of a State may manifest itself in different forms known respectively as special assessments, fees and taxes *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, and no tax can be imposed by Bye-law or Rule or Regulation unless the statute under which the supporting legislation is made specially authorising the imposition. Even if it is assumed that the power to tax can be delegated to the execution, the basis of the statutory power conferred by the Statute cannot be transgressed by the Rule Making Authority and the Rule Making Authority has no plenary powers *Bimal Chandra Banerjee Vs. State of Madhya Pradesh etc.*, and no tax or duty can be levied or collected except by authority of law and every levy of customs duty or any other tax must be sanctioned by law *Harivansh Lal Mehra Vs. State of Maharashtra*,

8. As aforesaid, although the Planning Authority did not point out to any statutory provision in support of levy Sri H.S. Jois, learned Senior Counsel appearing for the Planning Authority, has contended that the Planning Authority has the power to levy and collect water tax and ring road surcharge for the

reasons stated in the statement of objections and the petitioner being one of the beneficiaries of the project has no right to contend that the levy and collection are not authorised by law. In this context Sri Jois, learned Senior Counsel, placed reliance on a Decision of the Supreme Court in *The Municipal Council, Madurai Vs. R. Narayanan and Others*, . That was a case where the escalation of licence fee imposed on all hoteliers by Madurai Municipal Council was called in question on the ground that the fee levied u/s 321 of the Madras District Municipalities Act is not co-related to the service rendered and therefore it amounts to tax and it has no legal sanction and hence it is void and unenforceable. The question, therefore, before the Supreme Court was whether the levy imposed by the Municipality on hoteliers was a "fee" as prescribed by Section 321 of the Municipalities Act or a "tax" as provided by Section 78 of the said Act. Admittedly, the said Act provided for both. It is not so under the Planning Act. Hence the said Decision has no relevancy to the question in controversy in this case. He relied on another Decision of the Supreme Court in *P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*, , The principle laid down in the said Decision is also not applicable as the facts are clearly distinguishable from each other. The question in controversy in the said Decision, was whether the State was empowered to levy and collect "tax" in the guise of Court-fee under the provisions of relevant Court Fee and Suits Valuation Acts, and if it is to be treated as "fee" the same was disproportionate to the services rendered.

9. Sri Jois has further contended that the Planning Authority is empowered to levy tax and ring road surcharge by virtue of Section 32(5)(A) of the BDA Act. It is to be remembered that the BDA and the Planning Authority are two different legal entities for the purpose of two different enactments, It is no doubt true that the BDA is the Planning Authority for local planning area comprising the City of Bangalore, Section 81B of the Planning Act provides for consequences to ensure upon the constitution of the Bangalore Development Authority and it reads as under:

"81B CONSEQUENCES TO ENSUE UPON THE CONSTITUTION OF THE BANGALORE DEVELOPMENT AUTHORITY.-

Notwithstanding anything contained in this Act, with effect from the date on which the Bangalore Development Authority is constituted under the Bangalore Development Authority Act, 1976 the following consequences shall ensue:

(i) the Bangalore Development Authority shall be the local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted;

(ii) the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a Local Planning

Authority constituted for the Bangalore City;

(iii) the City Planning Authority shall stand dissolved and upon such dissolution.-

(a) anything done or any action taken (including any appointment, notification, order, scheme or byelaw made or issued), any commencement certificate or permission granted by the Bangalore City Local Planning Authority shall be deemed to have been done, taken, made, issued or granted under the provisions of this Act by the Bangalore Development Authority and continue to be in force until it is superseded by anything done or any action taken, any appointment, notification, order, scheme, or bye-law, made or issued, commencement certificate or permission granted by the Bangalore Development Authority under the provisions of this Act;

(b) all objections and liabilities incurred, all contracts entered into, all matters and things engaged to be done, by, with or for the Bangalore City Local Planning Authority shall be deemed to have been incurred, entered into, or engaged to be done, by, with or for the Bangalore Development Authority;

(c) all property movable and immovable and all interests of whatsoever nature and kind therein vested in the Bangalore City Local Planning Authority shall with all rights of whatsoever description used, enjoyed or possessed by the Bangalore Development Authority, vest in the Bangalore Development Authority;

(d) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against the Bangalore City Local Planning Authority may be continued or be instituted by or against the Bangalore Development Authority."

It is clear from the aforesaid provision that the BDA shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a local planning authority constituted for the Bangalore City, and the City Planning Authority stood dissolved and upon such dissolution any thing done or any action taken or any Commencement Certificate or permission granted, by the Bangalore City Local Planning Authority shall be deemed to have been done, taken, made, issued or granted under the provisions of this Act by the BDA.

9A. The entire provisions deal with the powers, functions and duties of BDA under the Planning Act as Planning Authority with reference to the powers, functions and duties of the dissolved Planning Authority. It is therefore clear that the Planning Authority in order to exercise its power to perform its functions and to discharge its duties under the provisions of the Planning Act, cannot invoke Section 32(5)(A) of the BDA Act. It is also to be remembered that Section 32 of the BDA Act deals with the procedure for formation of new extension or lay-outs by a private party and it does not deal with the sanction of permission for change in land use or development. It is needless to say that where a statutory body is empowered to exercise its power, perform its functions and discharge its duties under two different enactments in two different capacities, the exercise of power,

performance of function and discharge of duties under one statute shall not be extended in respect of its powers, functions and duties under other statute. The powers, functions and duties of the authority are compartmentalised differently for the purpose of different statutes. The power under one Act cannot be exercised for the purpose of the other Act. The Planning Authority under the provisions of the Planning Act is not empowered to invoke the provisions of the BDA Act for the purpose of the Planning Act. The question in controversy in this Petition since confined to the power, functions and duties of the Planning Authority, in relation to the levy and collection of water cess and ring road surcharge only, the authority and competence of the BDA to levy and collect such water cess and ring road surcharge has not been considered in this Petition as the same may be considered in Petitions where the authority of BDA is called in question.

10. Dealing with the power of BDA u/s 29 of the Act to levy fee or tax on transfer of sites, this Court in Vishwa Bharathi House Building Co-operative Society Ltd. Vs. Bangalore Development Authority, has held as follows:

"4. The contention of the petitioners is that B.D.A. does not have the power to levy tax. No provision is made in the B.D.A. Act, 1976. Article 265 of the Constitution mandates, no tax may be levied without the authority of law. In M.P.V. SUNDARARAMIER & CO. v. THE STATE OF ANDHRA PRADESH AND ANR. (AIR 1956 SC 468), the Supreme Court analysing the scheme of the lists in Schedule VII to the Constitution indicated that entries relating to taxation are to be found in the lists at the end clearly demarcating the distribution or conferment of power on the Union and the State Legislatures to regulate and levy tax or fee. Any tax or fee levied without the authority of law would be illegal and therefore, not enforceable.

5. The object of B.D.A. in enacting the B.D.A. Act is to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith. u/s 15 of the B.D.A. Act power or authority to undertake works and incur expenditure for development etc., are provided in the provisions so made, but there is no power to levy any tax or fee.

6. Even, as contended, in the statement of objections filed, the only source of authority is u/s 29 of the Act which provides for the B.D.A. and the Commissioner of B.D.A. to exercise the powers and functions exercised under the Karnataka State Municipal Corporations Act by the Corporation and the Commissioner respectively. But that power can be exercised only when the Government by notification declares that from such and such a date and for such period as may be specified therein and subject to such restrictions and modifications, if any, as may be specified in the notification - (i) the powers and functions of the Corporation or a Standing Committee thereof under the Karnataka Municipal Corporations Act shall be exercised and discharged by the Commissioner under the B.D.A. Act.

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8. That the Corporation of the City of Bangalore may levy taxes and fees, is apparent from the provisions of the Karnataka State Municipal Corporations Act, 1976 (See Chapter X thereof read with Rules as per Scheme III which forms part of the Act). It is only by getting that power conferred in the manner provided u/s 29 of the B.D.A. Act, the respondent-B.D.A. may acquire the power to levy tax or fee subject to such restriction, as may be prescribed in the notification issued by the Government. In the absence of such notification there is no power."

Again in Vishwabharathi House Building Co-operative Society Limited and Another Vs. The Bangalore Development Authority, Bangalore and Another, . to levy registration fee for allotment of house sites, this Court has held as follows :

"13. It is thus seen that the rules framed by the State Government may contain the restrictions, conditions and limitations subject to which the B.D.A. may lease, sell or transfer moveable or Immovable property. This provision, in my opinion, does not empower the B.D.A. to prescribe registration fee either in the nature of a restriction or a condition or a limitation for lease or sale or transfer of moveable or Immovable property. The State Government has not conferred by Rule 8 of the Rules, on the B.D.A. the power to impose tax and collect tax in the form of registration fee from the applicants. Even assuming that the rule empowers the authority to levy and collect registration fee, it cannot be said that the State Government has the power to authorise the B.D.A. to impose and collect tax by way of registration fee in the absence of a legislative enactment to do so. It is not possible to accept the argument that by virtue of Section 69 of the Act the State Government is empowered to make a Rule for imposition of tax on the applicant for allotment of sites. The taxing power can only be exercised by the Legislature and not by the State Government. Similarly, Section 69(2)(h) of the Act cannot be regarded as a provision which enables either the State Government or the B.D.A. to levy and collect tax in the form of registration fee for the purpose of regulating the allotment of sites by the B.D.A. In short, neither Section 69(2)(g) nor Section 69(2)(h) of the Act authorises and empowers exaction of tax from the applicants under the guise of registration charges either in the form of restriction or condition or limitation for lease or sale or transfer of moveable or Immovable property or for the purpose of regulating the allotment of sites by the B.D.A."

11. From the aforesaid discussion, I am of the view that there is no provision in the Planning Act, empowering the Planning Authority to levy/tax/cess/fee towards Cauvery Water Supply Scheme III Stage and ring road surcharge, without expressing any opinion as regards the power of the B.D.A. to levy such fee or surcharge under the provisions of the BDA Act.

12. In the result, the Petition is entitled to succeed only in part. Accordingly, I pass the following order -

(i) The Writ Petition is partly allowed. Rule is made absolute.

(ii) The notice dated 10.9.1993 bearing No. BDA.NA.YO.SO 1242(2)/93-94 (Annexure-K) is hereby quashed and respondent-3 is directed to issue Commencement Certificate in accordance with Rule 35 of the Planning Rules. Compliance within three months.

(iii) The other prayers are not considered in this Petition as they are unnecessary.

(iv) In the circumstances of the case, there is no order as to costs.