(1991) 01 KAR CK 0085

In the Karnataka High Court

Case No : Writ Petition No''s. 4394 to 4410 of 1988

B. Krishna Bhat — APPELLANT

Vs

Bangalore Development Authority — RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Bangalore Development Authority Act, 1976 — Section 29, 29 (1), 30
Karnataka Municipal Corporations Act, 1976 — Section 103, 106
Karnataka Town and Country Planning Act, 1961 — Section 12 (2) (ii)

Citation : (1991) ILR (Kar) 352 : (1991) 1 KarLJ 240

Hon'ble Judges : Balakrishna, J

Bench : Single Bench

Advocate : N.D.R. Ramachandra Rao, for the Appellant; N.S. Srinivasan, for R-1, C. Shivappa, General for R-2 and R.C. Castelino, for R-3, for the Respondent

Final Decision : Allowed

Judgement

Balakrishna, J.—The petitioners in these cases have sought for a Mandamus directing respondent-1 Bangalore Development Authority (B.D.A) to refund to the petitioners all the amounts illegally collected by them by way of taxes, cesses, fee etc., relating to the vacant lands and buildings and also for a direction to the B.D.A. to stop collection of taxes, cesses, fee etc., on such vacant land and buildings. The petitioners have also sought for additional reliefs in the nature of a declaration that the B.D.A. has no Authority of Law conferred under the Bangalore Development Authority Act, 1976 (''the Act'' for short) to levy, assess or recover property tax and other taxes from the concerned members of the public and For a , declaration that Section 29 of the Act is ultra-vires, unconstitutional and void and for a declaration that Section 29 of the Act cannot be enforced by the B.D.A. for the purpose of levy, assessment, imposition and recovery of property tax.

2. All the 17 petitioners are rate-payers and owners of sites which are situate in I Phase, Vishwabharathi Housing Complex, Girinagar, Bangalore. Not only as

owners of sites but also as persons interested in furthering public cause and not as busy bodies, they have approached this Court through public interest action. Their grievance is that the B.D.A. has made illegal exaction of taxes, cesses, fee etc., as ''described in the Annexures to the Writ Petitions. The petitioners submitted representations to the B.D.A. asking for refund of the amounts recovered by the B.D.A. According to the petitioners, the B.D.A. is not empowered to collect any such taxes, cesses or fee from the petitioners under law and that the B.D.A. does not derive any power u/s 29 of the Act to make such an exaction.

3. The case of the petitioners is that there was no valid Notification made u/s 29 of the Act and even if such a Notification was there, the mandatory provisions of Sections 103 to 106 of the Karnataka Municipal Corporation Act, 1976, have not been followed and applied by the B.D.A. The Notifications issued by the Government u/s 29 of the Act are for a duration of 5 years or until the areas are handed over to the Corporation of the City of Bangalore, whichever is earlier. It is alleged that in some cases Notifications have not at all been issued and in some cases the Notifications issued by the Government have expired by afflux of time and no further Notifications u/s 29 of the Act were subsequently issued and, therefore, in the absence of such Notifications, the B.D.A. has no power to levy any of the taxes, cesses and fee. It is stated that in Writ Petition Nos. 7912 to 7914 of 1986 the levy of taxes and fee was challenged and the Writ Petitions are allowed on merits on 14-11-1986 holding that the B.D.A. had no authority under law to collect taxes from the petitioners in those Writ Petitions. In the said Writ Petitions, it was further held, according to the petitioners, that in the absence of a valid Notification as contemplated u/s 29 of the Act the B.D.A. has no power to collect the said taxes, cesses and fee from the petitioners and the demand notice Issued by the B.D.A. was held to be without the Authority of Law. It appears that thereafter the B.D.A. filed Civil Petition Nos. 428 to 430 of 1987 for review of the order passed by this Court on 14-11-1986 in Writ Petition Nos. 7912 to 7914 of 1986. It is stated that the said Civil Petitions were rejected by order dated 12-11-1987 at the admission stage and, therefore, the order passed in the said Writ Petitions is binding on the B.D.A. Since the B.D.A. is continuing to demand and collect taxes, cesses and fee from the members of the public and also from the petitioners, they are aggrieved and, therefore, have approached this Court for legal redress.

4. In the additional grounds urged by the petitioners, it is contended that apart from complying with the mandatory provisions of Section 29(1) of the Act as well as the mandatory provisions of Sections 103 to 107 of the Karnataka Municipal Corporation Act, 1976 (''the Corporation Act'' for short), the B.D.A. has no Authority of Law to assess, levy and recover property tax and cesses and any such action is violative of Article 265 of the Constitution of India.

5. The point for consideration is whether the B.D.A. has no power or authority of law to assess, levy and recover property tax, cesses and fee from the members

of the public and whether the B.D.A. is liable to refund money collected by way of taxes, cesses and fee inclusive of vacant land tax, building tax, shop tax, library cess, lighting tax, general sanitary cess, special sanitary cess, education cess and khatha transfer fee and further whether Section 29 of the Act is ultra-vires, unconstitutional and void.

6. The Act was enacted to provide for the establishment of a Development Authority for the purpose of developing the City of Bangalore and areas adjacent thereto and for matters connected therewith as could be seen from the object of the Act. The Act came into force on 20-12-1975. The B.D.A. is a body corporate having perpetual succession and a common seal with power subject to the provisions of the Act, to acquire, hold and dispose of property both movable and immovable and to contract and to be sued in the name of the B.D.A. The B.D.A. consists of a Chairman, a Finance Member, an Engineer, a town planner, a person with experience in architecture, an officer of the Karnataka Health and Family Planning Services not below the rank of a Joint Director, an officer of the Secretariat Department in-charge of urban development not below the rank of a Deputy Secretary to Government, two persons who are Members of the Karnataka State Legislature, two persons of whom one shall be a woman and one shall be a person belonging to the weaker sections, our others of whom one shall represent the labour, a representative of the Bangalore Water Supply and Sewerage Board, a representative of the Karnataka Electricity Board, a representative of the Karnataka State Road Transport Corporation, two persons elected by the Councillors of the Bangalore City Corporation from among themselves in the prescribed manner and the Commissioner, ex-officio. It is also provided that all the members of the B.D.A. shall be appointed by the Government. It is further provided that the Chairman, the engineer member, the finance member and the town planner member shall be whole-time members and the other members shall be part time members and that all the names of the Chairman and members appointed or elected shall be published by the Government by Notification. The constitution and incorporation of the B.D.A. is to be found as aforesaid in Chapter II of the Act. From Section 3(2) of the Act the functions of the B.D.A. as empowered consist of acquisition, holding and disposal of property both movable and immovable. The power to contract and the liability to sue and the right to sue are also provided for in Sub-section (2) of Section 3 of the Act. Section 15 under Chapter III of the Act describes the power of the B.D.A. to undertake works and incur expenditure for development. Section 16 of the Act deals with the particulars for which provision should be made in a development scheme as defined u/s 15 of the Act and u/s 15 of the Act the B.D.A. is empowered to draw up detailed schemes called the development scheme for the development of the Bangalore Metropolitan Area and provides that the B.D.A. may undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefore and also for the framing and execution of the development schemes, with the prior approval of the Government. It also empowers the B.D.A. to make and take up any new or

additional development schemes from time to time on its own initiative if satisfied of the sufficiency of its resources or on the recommendation of the local authority if the local authority places at the disposal of the B.D.A. the necessary funds for framing and carrying out any scheme or otherwise. Sub-section (3) of Section 15 of the Act contemplates that the Government may whenever it deems it necessary require the B.D.A. to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government, notwithstanding anything contained in the Act or in any other law for the time being in force. According to Section 16 of the Act, every development scheme contemplated u/s 15 within the limits of the area comprised in the scheme shall provide for the acquisition of any land which, in the opinion of the B.D.A., will be necessary for or affected by the execution of the scheme, laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, raising any land which the B.D.A. may consider expedient to raise to facilitate better drainage, forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area, the required sanitary arrangements and further either within or without the limits aforesaid provide for the construction of houses.

7. It is seen from the aforesaid provisions that the power and function of assessment, levy and recovery of taxes, cesses and fee are not provided for. However, Section 20 of the Act empowers levy of betterment tax if the market value of any land in the area comprised in the scheme not required for the execution thereof has in the opinion of the B.D.A. increased or will increase as a consequence of execution of any development scheme. Such betterment tax could be levied on the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of such scheme. Section 21 of the Act provides for assessment of betterment tax by the B.D.A. It is not the case of the petitioners that they are aggrieved by the imposition, assessment and recovery of betterment tax. Section 25 of the Act empowers the B.D.A. with the previous sanction of the Government to take up such works as the B.D.A. considers necessary or desirable for the further development of any area within the Bangalore Metropolitan area subject to the condition that the Corporation shall be consulted if such area lies within the limits of the City of Bangalore. The Corporation is defined as the Corporation of the City of Bangalore. Sub-section (2) of Section 25 of the Act contemplates that the expenditure incurred or proposed to be incurred or such portion thereof as may be determined by the B.D.A. and approved by the Government in carrying out such works may be recovered by a pro-rata levy on the owners of properties benefitted by such works as may be determined by the B.D.A. and that the said sum may be recovered as any other sum due to the B.D.A. under the provisions of the Act. We are not concerned with the pro-rata levy aforementioned on the owners of properties benefitted by the works undertaken by the B.D.A. for further development of any area within the Bangalore Metropolitan area.

8. Section 39 of the Act authorises the B.D.A. to borrow any sum required for the purpose of the Act with the previous sanction of the Government and subject to such conditions as may be prescribed in that behalf.

9. Section 40 of the Act describes what items are to be credited to the development fund of the B.D.A, The items include rents, profits and sale proceeds of all lands, buildings and other property vested or vesting in or acquired by the B.D.A. under the Act. The fund shall be called as the Bangalore Development Fund. It is also provided under Sub-section (2) of Section 40 of the Act that any amount borrowed u/s 39 of the Act, such sums of money as may be placed by the Government at the disposal of the B.D.A. from time to time for the purpose of the Act and such contributions as the Corporation or a local authority may, from time to time, be called upon by the Government to make after consideration by the Government of the relief or addition to the Municipal resources accruing or likely to accrue as the result of development schemes undertaken by the B.D.A. shall be credited to the Bangalore Development Fund and similarly the betterment tax and other sums due and paid to or recovered by the B.D.A. under the provisions of the Act have to be credited to the said fund subject to the provisions of Section 26 of the Act, Section 26 of the Act provides that where the increase in value of any land on account of execution of a development scheme which is made on the recommendation of the Corporation and for which the Corporation has placed at the disposal of the B.D.A. the necessary funds for framing and carrying out such schemes, the betterment tax collected by the B.D.A. from the owners of such land shall be credited by the B.D.A. to the Municipal Fund of the Corporation.

10. An argument was advanced by the learned Counsel appearing for the B.D.A. that the words "other sums due and paid to or recovered by the Authority under the provisions of this Act" found in Section 40(2)(d) of the Act are referable to the taxes, cesses and fee the assessment, imposition and recovery of which is challenged in these Writ Petitions. This contention cannot be accepted because the sums due and paid to or recovered by the B.D.A. should have been under the provisions of the Act. Whether the provisions of the Act empower the B.D.A. to recover taxes, cesses and fee is to be examined and unless such a power is reserved under the Act in specific terms, it is not possible to subscribe to the stand taken by the B.D.A. Section 41 of the Act deals with the various purposes to which the Bangalore Development Fund could be applied or utilised. According to this provision, the fund shall be applied by the B.D.A. in the payment of the charges incidental to the carrying out of the purposes of the Act subject to the general or special orders of the Government and the charges shall include the cost of maintaining a separate establishment for the collection of the rents and profits and other proceeds of the property vested or vesting in or acquired by the B.D.A. under the Act, the cost of petty and other establishments not being part of the scheduled staff necessary for the supervision of properties or other revenue purposes, the cost of management including the salaries and allowances of the scheduled staff and all incidental expenses and all payments made by the

B.D.A. in respect of rates and taxes levied under the City of Bangalore Municipal Corporation Act, 1949 upon lands and buildings vested in the B.D.A. and not subject to exemption. It also provides for making advances from the fund for the purpose of enabling persons not being Government servants to provide themselves with houses or other accommodation. It is significant that u/s 41(2)(d) of the Act, the Bangalore Development Fund could be utilised for payment of rates and taxes levied under the City of Bangalore Municipal Corporation Act, 1949 in respect of lands and buildings vested in the B.D.A. that are not subject to exemption. In other words, the B.D.A. is expected to pay the rates and taxes levied under the City of Bangalore Municipal Corporation Act, 1949 in respect of lands and buildings vested in the B.D.A. from out of the Bangalore Development Fund only. Section 41 of the Act does not provide for payment of rates and taxes aforesaid by recovery in turn from the members of the public in respect of lands and buildings vested in the B.D.A.

11. Section 69 of the Act invests Rule Making Power in the Government through Notification by it. None of the provisions of Section 69 of the Act refer to imposition and recovery of the taxes, cesses and fee in question. In tact, there is no rule framed u/s 69 empowering such imposition and recovery.

12. Now we come to Section 29 of the Act, the vires of which is questioned in these Writ Petitions. Section 29 of the Act reads as follows:

"29. Authority and Commissioner to exercise powers and functions under Mysore Act 69 of 1949:- (1) In any area or part thereof to which this Act applies, the Government may, by Notification, declare that from such 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 City of Bangalore Municipal Corporation Act, 1949, shall be exercised and discharged by the Authority; and

(ii) the powers and functions of the Commissioner of the Corporation under the said Act shall be exercised and discharged by the Chairman:

Provided that the Corporation shall be consulted before making such declaration if such area or part thereof lies within the limits of the City of Bangalore.

XXX XXX XXX"

13. According to this provision, the Government is empowered to declare by Notification with effect from a specified date and for a specified period mentioned in the Notification subject to such restrictions and modifications specified therein, in any area or part thereof to which the Act applies, the powers and functions of the Corporation or a Standing Committee thereof under the City of Bangalore Municipal Corporation Act, 1949, to be exercised and discharged by the B.D.A. It also provides that the powers and functions of the Commissioner of the Corporation under the said Act shall be exercised and discharged by the

Chairman. The proviso envisages that the Corporation shall be consulted before such a declaration is made if such an area or part of it lies within the limits of the City of Bangalore.

14. It is on the basis of the Notification issued u/s 29(1) of the Act that the B.D.A. is assessing, imposing and recovering taxes, cesses and fee etc., from the members of the public. But the question is whether such a power is capable of being vested in the B.D.A. by a Notification issued by the Government u/s 29(1) of the Act. There is no inherent power under the Act under any of the provisions to assess, impose and recover the taxes, cesses and fee other than betterment tax. In the absence of such an inherent power under the Act, the B.D.A. being a creature of the statute, the question is whether the B.D.A. or the Chairman as the case may be could exercise power which is alien to it under its own act and exercise powers which are exercisable by the Corporation or by the Commissioner of the Corporation under the City of Bangalore Municipal Corporation Act, 1949. The other question is whether the power to assess, levy and recover the taxes, cesses and fee which could be done by the Competent Authority prescribed under the City of Bangalore Municipal Corporation Act, 1949, could be transferred to the B.D.A. or its Chairman unless the corresponding powers under the two Acts are co-extensive. The intention of the Legislature was that the B.D.A. should exercise only such powers which are expressly provided under the Act and similarly the intention of the Legislature was that the Competent Authority under the City of Bangalore Municipal Corporation Act, 1949, alone shall exercise the powers conferred thereunder. In the City of Bangalore Municipal Corporation Act, 1949, there is no corresponding provision analogous to Section 29(1) of the Act that the powers invested in the Competent Authority under the said Act could be transferred to the B.D.A. or its Chairman. On a closer examination of the provisions contained in the Corporation Act, 1949, it is seen that there are mandatory provisions which have to be strictly adhered to even by the Competent Authority under the said Act before the Corporation proceeds to impose, assess and recover various taxes, cesses and fee. Under the Act, similar provisions are not provided. In fact, the absence of such provisions support the inference that the B.D.A. under the Act was never intended by the Legislature to exercise the power of imposition, assessment and recovery of taxes, cesses and fee. There is no indication in the scheme of the Act, the object of the Act and the provisions of the Act that beyond developing the City of Bangalore and areas adjacent thereto and for matters connected therewith the role of raising financial resources by means of imposition, assessment and recovery of taxes, cesses and fee. In my opinion, Section 29(1) of the Act does not confer on the B.D.A. the power to levy and collect taxes, cesses and fee. It appears to me that Section 29(1) of the Act is intended only for the purpose of exercising such powers which are consistent with and analogous to the powers and functions invested under the Act. Unless there is a specific statutory power vested in the B.D.A. to raise resources by imposition and recovery of taxes, cesses and fee by express language under the Act, it is not

possible to accept the contention that such a power given to the Competent Authority of the Corporation under the Corporation Act is either transferrable or vested by virtue of a Notification issued by the Government u/s 29(1) of the Act.

15. If the intention of the Legislature was to invest the B.D.A. with fiscal powers, such an intention would have been manifested with the insertion of specific provisions in the Act like the provision for levy of betterment tax. Even assuming that Section 29 of the Act enabled the B.D.A. and the Commissioner to exercise powers and functions under the Mysore Act 69/1949, no Rules have been framed in regard to the mode of exercise of power to assess and recover taxes, cesses and fee from the members of the public. It appears to me that the powers and functions conferred on the B.D.A. u/s 29(1) of the Act are of a general nature and the powers so exercisable are the general powers and functions of the Corporation or a Standing Committee thereof under the City of Bangalore Municipal Corporation Act, 1949. Even the Rule Making Power conferred on the Government u/s 69 of the Act does not specifically or otherwise refer to conferment of fiscal powers on the B.D.A. Even assuming that Sub-section (2) of Section 69 of the Act refers in particular and without prejudice to the generality of the foregoing power mentioned therein and that such Rules may provide for all or any of the matters specified therein, no Rules are brought to my notice as having been framed for the purpose of imposition, assessment and recovery of taxes, cesses and fee. In the absence of Rules, it is not possible to accede to the contention that the B.D.A. derives its power to levy and recover taxes, cesses and fee from Section 29(1) of the Act. The power to levy and recover taxes, cesses and fee has to be expressly conferred on the B.D.A. by the Act if that is the will of the Legislature. Such a power cannot be presumed by mere implication.

16. Even under the Corporation Act, no tax or cess or fee can be levied except in the manner provided under the corresponding provisions of the Corporation Act. The Competent Authority under the Corporation Act cannot levy such taxes or cesses or fee u/s 103 of the Corporation Act straight away without following the preliminary procedure mandated by Section 104 of the Corporation Act and further subject to the provisions of Section 103(b) of the said Act. What the Corporation could do in the matter of levy of tax etc., is only in regard to the areas which fall within its jurisdiction. The Corporation is rendering service to the ratepayers residing within its jurisdiction while collecting taxes, cesses and fee from them. There is no material on record to hold that the B.D.A. has been rendering similar service to the members of the public. The essential services which are mentioned in Schedule II of the Corporation Act disclose the variety of services rendered by the Corporation to the taxpayers. In fact, there is no reference at all even in the definitions given in the B.D.A. Act 1976 on impost, tax, fee and cess, whereas there is a definition of betterment tax in Section 2(d) of the Act. In the Corporation Act, in Chapter XI u/s 149, not only the definition of ''Corporation Fund'' is given, but also the relevance of impost, tax, fee, cess, penalty, tells etc., in constituting the Corporation Fund. In contradistinction, the

Bangalore Development Fund, defined u/s 40 of the Act, does not make any reference to impost, tax, fee, cess etc., as constituting Bangalore Development Fund. The fact that the B.D.A. is not an authority which answers the description of a local self Government like the Corporation cannot be lost sight of. There is a dichotomy of the functions of a State. It consists of two parts. They are regal functions and non-regal functions. Non-regal functions are municipal functions. It is well recognised that Municipal Corporations and local authorities are primarily separate branches of governmental activity since the municipal bodies or local authorities which take away a part of the affairs of the Government in local areas exercise the powers of regulation and subordinate taxation. They are political sub-divisions and agencies for the exercise of governmental functions.

17. In Secretary, Madras Gymkhana Club Employees'' Union Vs. Management of the Gymkhana Club, and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, could be found pointed reference to the regal and non-regal functions of the State and the exercise of powers of regulation as well as subordinate taxation. In Federated State School Teachers'' Association of Australia v. State of Victoria 41 CLR 569 585 which was cited with approval by the Supreme Court in The Corporation of the City of Nagpur Vs. Its Employees, the view taken was that the State may assume non-regal functions by means of legislative power and when such functions are assumed by the State, it acts simply as a huge Corporation with its legislation as the charter and its action under the legislation, so far as it is not regal execution of the law, is merely analogous to that of a private company similarly authorised. In the case reported in Secretary, Madras Gymkhana Club Employees'' Union Vs. Management of the Gymkhana Club, it was held that the Municipal Corporations and local bodies too, therefore, have dual functions i.e., regal and non-regal. But if such bodies indulge in municipal trading or business or have to assume the calling of employers, they are employers whether they carry on or not business commercially for purposes of gain or profit.

18. Considering the nature of the activity, objects, scheme and nature of duties and functions of the B.D.A. under the Act, except for recovery of betterment tax, it cannot be said that the B.D.A. is invested with non-regal functions. Logically it would follow that the powers of subordinate taxation under non-regal functions which are better known as municipal functions which are exercisable by the Corporation under the Corporation Act cannot be exercised by the B.D.A. which is entrusted with regal functions exclusively relating to developmental activity under the provisions of the Act. Unlike the Corporation, the B.D.A. is not a political sub-division and agency either for the purpose of exercise of governmental functions or for the purpose of exercise of powers of regulation and subordinate taxation. This is understandable because the nature of functions and duties of the B.D.A. are dissimilar to the nature of functions and duties of a Corporation or a municipal body. B.D.A. is development oriented whereas the Municipal Corporation is service oriented.

19. It is no doubt true that there is a Notification issued by the Housing and Urban Development Secretariat, dated 7-8-1989 published in the Official Gazette of 2-10-1989 that in exercise of the powers conferred by Sub-section (1) of Section 29 of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976), the Government of Karnataka declares that in the areas specified in Schedule-I, with effect from the date of publication of the Notification in the Official Gazette and until the Corporation takes over the said areas for maintenance, the powers and functions of the Corporation or a Standing Committee thereof under the Karnataka Municipal Corporation Act, 1976 (Karnataka Act 14 of 1977) specified in Schedule-II shall be exercised and discharged by the B.D.A. and the powers and functions of the Commissioner of Corporation under the said Act specified in Schedule-II shall be exercised and discharged by the Commissioner.

20. Schedule-I consists of the name of the layouts and the boundaries. Schedule-II consists of the provisions of Karnataka Municipal Corporations Act, 1976, including the corresponding chapters. For the purpose of taxation, Chapter X is mentioned in Schedule-II and Sections 103 to 117 and 140 to 148 of the Karnataka Municipal Corporations Act, 1976 are made applicable for the purpose of exercise of power by the B.D.A. and the Commissioner of the B.D.A. It is to be examined whether the Government can confer upon the B.D.A. u/s 29 of the Act the power to levy house tax, vacant land tax, cess, fee etc., by issuing a Notification and authorise the B.D.A. to follow the procedure laid down under Sections 103 to 117 of the Corporation Act and by exercising power under Sections 140 to 148 of the said Act. Section 29 of the Act is general and not specific in the tenor of its language, whereas the functions and powers of the Corporation are specific, precise and well defined in the provisions of Sections 57, 58 and 59 of the Corporation Act laying down the general, obligatory and discretionary service functions. Section 57 relates to general functions, Section 58 relates to mandatory functions and Section 59 pertains to discretionary functions. It would be appropriate to reproduce the relevant provisions of the Karnataka Municipal Corporations Act, 1976, to appreciate the legislative clarity of purpose in the matter of conferment of powers on Municipal Corporations imparting to them an exclusive service orientation unlike the B.D.A. Act:

"57. General powers of the Corporation:-

(1) Subject to the provisions of this Act, the Rules, the Regulations and the Bye-laws made thereunder, the Municipal Government of the City shall vest in the Corporation.

(2) Without prejudice to the generality of the provisions of Sub-section (1), it shall be the duty of the Corporation to exercise such powers, perform such functions and discharge such duties as are conferred on it by and under this Act and consider all periodical statements relating to the receipts and disbursements, and all progress reports and pass such resolutions thereon, as it thinks fit.

58. Obligatory functions of the Corporations:- It shall be incumbent on "the Corporation to make reasonable and adequate provision by any means or measures which it is lawfully competent to use or to take, for each of the following matters, namely -

(1) erection of substantial boundary marks of such description and in such positions as shall be approved by the Government defining the limits or any alteration in the limits of the City;

(2) the watering and cleaning of all public streets and public places in the City and the removal of all sweepings therefrom;

(3) the collection, removal, treatment and disposal of sewage, offensive matter and rubbish and, the preparation of compost manure from such sewage, offensive matter and rubbish;

(4) the construction, maintenance and cleaning of drains and drainage works and of public privies, water closets, urinals and similar conveniences;

(5) the lighting of public streets, municipal markets and places of resort vested in the Corporation;

(6) the maintenance of a Corporation office and of all public monuments and open spaces and other property vesting in the Corporation and keeping a true and correct account of all Corporation property;

(7) the naming or numbering of streets and of public places vesting in the Corporation and the numbering of premises;

(8) the regulation and abatement of offensive and dangerous trades or practices;

(9) the maintenance, change and regulation of places for the disposal of the dead and the provision of new places for the said purpose and disposing of unclaimed dead bodies;

(10) the construction or acquisition and maintenance of public markets and slaughter houses and the regulation of all markets and slaughter houses;

(11) the maintenance of an ambulance service and service for conveying dead bodies to crematoriums;

(12) the destruction of birds or animals causing nuisance, or of vermin and confinement or destruction of stray or ownerless dogs;

(13) laying out new public streets;

(14) maintaining or aiding schools for pre-primary education;

(15) the construction or acquisition and maintenance of cattle pounds;

(16) establishing and maintaining a system of public vaccination;

(17) the reclamation of unhealthy localities, the removal of noxious vegetation

and generally the abatement of all nuisances;

(18) the planting and maintenance of trees on road sides and elsewhere;

(19) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, cause-ways and the like;

(20) the removal of obstructions and projections in or upon streets, bridges and other public places;

(21) the management and maintenance of all municipal water works and the construction or acquisition of new works necessary for a sufficient supply of water for public and private purposes;

(22) preventing and checking the spread of dangerous diseases;

(23) the securing or removal of dangerous buildings and places;

(24) the construction and maintenance of residential quarters for the poura karmikas;

(25) the provision of public parks, gardens, play-grounds and recreation grounds;

(26) the regulation of lodging houses, camping grounds and rest houses in the City;

(27) establishing and maintaining compost plants for disposal of sewage;

(28) supplying, constructing and maintaining in accordance with the general system approved by the Corporation, receptacles, fittings, pipes and other appliances whatsoever on or for the use of premises for receiving and conducting the sewage thereof into drains under the control of the Corporation;

(29) taking measures to meet any calamity affecting the public;

(30) fulfilment of any obligation imposed by or under this Act or any other law for the time being in force and discharge of functions in respect of any matter entrusted to the Corporation by Government by Notification;

(31) subject to adequate provision being made for the matters specified above, the provision of relief to destitute persons in the City in times of famine and scarcity and the establishment and maintenance of relief works in such times;

59. Discretionary functions of the Corporation:- The Corporation may, in its discretion, provide, either wholly or in part, for all or any of the following matters, namely:-

(1) the organisation, maintenance or management of institutions within or without the City for the care of persons who are infirm, sick or incurable, or for the care and training of the blind, deaf, mute or otherwise disabled mothers or infants or school children;

(2) the organisation, maintenance or management of maternity and infant-

welfare homes or centres;

(3) the provision of milk to expectant or nursing mothers or infants or school children;

(4) the organisation, maintenance or management of chemical or bacteriological laboratories for the examination or analysis of water, food or drugs, for the detection of diseases or for research connected with public health;

(5) the organisation, maintenance or management of swimming pools, public wash houses, bathing places and other institutions designed for the improvement of public health;

(6) the construction and maintenance in public streets or places, or drinking fountains for human beings and water-troughs for animals;

(7) survey of buildings or lands;

(8) the provision of music for the people;

(9) encouraging the development of planning and maintenance of trees and plants on private land and within private compounds;

(10) maintenance of health museums;

(11) construction or maintenance of infirmaries or hospitals for animals;

(12) the organisation or maintenance, in times of scarcity of shops or stalls for the sale of necessaries of life;

(13) the building or purchase and maintenance of residence for Corporation Officers and servants;

(14) the grant of loans for building purposes to Corporation servants on such terms and subject to such conditions as may be prescribed by the Corporation;

(15) any other measures for the welfare of Corporation servants;

(16) the establishment and maintenance or the aiding of, museums and art galleries, botanical or zoological collections and the purchase or construction of buildings therefor;

(17) contribution towards any public fund raised for the relief of human suffering caused by natural calamities within the City or for the public welfare;

(18) the preparation or presentation of addresses to persons of distinction;

(19) granting rewards for information regarding the infringement of any provisions of this Act, or of the Rules, Bye-laws and regulations;

(20) the building or purchase and maintenance of suitable dwelling for the poor and working classes;

(21) the provision of shelter to destitute or homeless persons and any form of

poor relief;

(22) with the previous sanction of the Government, the making of a contribution towards any public ceremony or entertainment in the City;

(23) any measure not herein before specifically named, likely to promote public safety, health, convenience or instruction."

Under the Notification issued by the Government, the powers and functions of the Corporation exercisable under Sections 57, 58 and 59 of the Corporation Act have not been conferred upon the B.D.A. at all. In my opinion, Section 29 of the Act does not enable the Government to confer upon the B.D.A. the powers and functions mentioned under the heading of taxation in Chapter X of the Corporation Act. Comprehended from the objects of the Act and the aims of the B.D.A. in the back-ground of the scheme of the Act, the powers and functions that are capable of being conferred upon the B.D.A. are all of limited nature which the B.D.A. is capable of discharging in accordance with the intendment of the Legislature under the Act. It has to be emphasised that the B.D.A. is neither a local self Government nor a municipal body though it may be described as a local authority. The very composition and manner of composition of the Board is self-explanatory. The Board of the B.D.A. consists of nominated members and it is not an elected body. Police power is not invested in it. The test of eminent domain in the matter of exercise of power is not answered by the B.D.A. because it is a body which is constituted exclusively to carry out specified functions such as formation of layouts and distribution of sites apart from construction of houses in special circumstances. Even the developmental activity is restricted to the preliminary stage of development. Subsequent or advance stages of developments such as construction of buildings and maintenance of layouts are beyond the scope of its activity in view of the existence of the Karnataka Town and Country Planning Act and the Corporation Act. It is significant that the construction of buildings on the sites allotted by the B.D.A. and other allied matters are regulated and controlled by the provisions of the Karnataka Town and Country Planning Act, to be more precise, by Section 14 of the said Act. The final stage namely the maintenance of the layouts is entrusted to the Corporation. By gleaning into the provisions of Section 30 of the Act, one could discover the reference to streets and civic amenity sites only. A provision for transfer of the layout to the Corporation by the B.D.A. is conspicuous by its absence. The layouts formed by the B.D.A. become Corporation area only after a Notification by the Government u/s 4 of the Corporation Act is issued. It would be reasonable to presume that the power inherent in the functional role of the B.D.A. which is limited to formation of a mere layout, rules out the power to levy and recover taxes, cesses and fee unless such a power is consistent with the nature of functions and duties, which the Act enjoins on the B.D.A. Even the taxes specified u/s 103 of the Corporation Act are leviable only when the municipal body imposing the tax is duty bound to maintain public streets, lighting, supply of drinking water, sanitary benefits etc. Unlike the Corporation, there is no duty cast upon the B.D.A. to provide any of the above amenities. Even if these amenities have to be provided during the interregnum, the expenses will have to be met by the B.D.A. out of the development fund and betterment tax collected u/s 20 of the Act and not by levying taxes etc., under the provisions of the Corporation Act, such as Section 103. Even the B.D.A. Zonal Regulations are framed not under the Act but only u/s 12(2)(ii) of the Karnataka Town and Country Planning Act. It is, therefore, abundantly clear that the B.D.A. has no control over the construction of buildings which come within the B.D.A. area and that all stages of subsequent development and formation of layout are taken care of by the Karnataka Town and Country Planning Act. There is no analogy between the functions of the B.D.A. on the one hand and t le Corporation on the other.

21. At the risk of repetition, I have to observe that house tax, property tax etc., are leviable by the B.D.A. only if it discharged municipal functions and such functions are not given to the B.D.A. under the Act. Taxing power is not conferred on the B.D.A. expressly in specific terms or otherwise under the Act to meet the requirements of Article 265 of the Constitution.

22. In Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, the Supreme Court has held as follows:-

"...The Corporation has been assigned certain obligatory functions which it must perform and for which it must find money by taxation. It has also been assigned certain discretionary functions. If it undertakes any of them it must find money, Even though the money that has to be found may be large, it is not unlimited for it must be only for the discharge of functions whether obligatory or optional assigned to the Corporation. The limit to which the Corporation can tax is therefore circumscribed by the need to finance the functions, obligatory or optional which it has to or may undertake to perform. Another limit and guide-line is provided by the necessity of adopting budget estimates each year as laid down in Section 109 of the Act. The budget will show the revenue and expenditure and these must balance so that the limit of taxation cannot exceed the needs of the Corporation as shown in the budget to be prepared under the provisions of the Act. Here again there is a limit to which the taxing power of the Corporation can be exercised in the matter of optional taxes as well, even though there is no maximum fixed as such in the Act...."

23. Levy and recovery of any tax should have a reasonable nexus to the functions assigned to the levying authority apart from legislative sanction as envisaged by Article 265 of the Constitution. It is precisely because the municipal body is discharging its non-regal functions, that it levie? and collects imposts in lieu of the service rendered. When such functions are not assigned at all to the B.D.A., the collection of such taxes would be without the Authority of Law. It is apparent and obvious, that the powers and functions referred to in Section 29 of the Act are in turn not related to either Sections 57, 58 and 59 of the Corporation Act or to other powers and functions which the Corporation exercises

within its domain consequent to the direct conferment under several provisions of the Corporation Act.

24. I am, therefore, of the opinion that Section 29 of the Act does not confer upon the B.D.A. the power to impose, assess and collect taxes, cesses and fee notwithstanding the Notification issued by the State Government under the said provision without corresponding service compulsions. The Legislature has not conferred an unbridled and arbitrary power on B.D.A. to the extent of taxing the rate payers. Hence, the Notification issued by the Government u/s 29 is neither valid nor effective. The question of striking down the provisions of Section 29 of the Act does not, therefore, arise in the facts and circumstances of these cases. It can only be said that the provisions of Section 29 of the Act have been improperly applied by the State Government by issuing a Notification authorising the B.D.A. to exercise powers under the provisions of the Corporation Act such as Sections 103 to 117 and 140 to 148 under Chapter X of the Corporation Act relating to taxation. My observation and finding is restricted only to the powers conferred by the State Government under Chapter X (Taxation) in respect of Sections 103 to 117 and 140 to 148 under the provisions of the Corporation Act only. There is no material on record to assume that the B.D.A. has been rendering the services which correspond to the taxes, cesses and fee recoverable under the relevant provisions of the Corporation Act if the Competent Authorities of the Corporation themselves were to embark on such levy and recovery. The Notification issued by the State Government dated 7-8-1989 purports to empower the B.D.A. to exercise the powers and functions of the Corporation or a Standing Committee thereof under the Corporation Act specified in Schedule-II until the Corporation takes over the areas for maintenance, the areas which are specified in Schedule-I of the Notification.

25. Streets which a are completed have to be vested in the Corporation and maintained by the Corporation, according to Sub-section (1) of Section 30 of the Act. Under Sub-section (2) of Section 30 of the Act any open space including parks and play grounds as may be notified by the Government reserved for ventilation in any part of the area under the jurisdiction of the B.D.A. as part of any development scheme sanctioned by the Government shall be transferred on completion to the Corporation for maintenance at the expense of the Corporation and shall thereupon vest in the Corporation.

From this provision, it is clear that the intention of the Legislature is that no sooner the development has been completed than it is the duty of the B.D.A. to transfer the developed area to the Corporation for maintenance by it, at its own cost. In other words, the B.D.A. is not expected to waste time in transferring the developed area to the Corporation and this is understandable since delay would entail undue burden on the B.D.A. of looking after the maintenance of the area at its own expense and the longer the delay the greater the burden on the B.D.A. Instead of diligently and promptly transferring the developed area on completion to the Corporation, it appears to me that the B.D.A. either on account of neglect or on account of dereliction of duty has delayed the transfer and is now seeking to shift the burden of maintenance cost on the members of the general public by resorting to levy and recovery of varieties of taxes, cesses and fee which the Act does not authorise. One thing is clear from Section 30 of the Act and that is that before transfer of completed area, the maintenance costs have to be met by the B.D.A. and not by the members of the public residing in the concerned area and after completion and transfer to the Corporation, the maintenance cost shall be borne by the Corporation. The contention raised on behalf of the B.D.A. that taxes, cesses and fee are levied for the purpose of defraying the maintenance cost does not stand legal scrutiny. Whereas provision is made under the Corporation Act for levy and recovery of several taxes, cesses and fee with corresponding service being rendered by the Corporation to the rate payers, the money so collected being a part of the Corporation Fund, in respect of the B.D.A. there are no provisions under the Act authorising or empowering the imposition and recovery of taxes, cesses and fee except betterment tax and there is no provision under the Act which provides for inclusion of taxes, cesses and fee in the Bangalore Development Fund under the Act nor any statutory obligation to be rendered by the B.D.A. correspondingly. Therefore, I am of the opinion that the B.D.A. has no authority of law to levy, assess and recover the taxes, cesses and fee in question in these Writ Petitions. It is of significance that Section 20 of the Act provides an insight into the object of levy of betterment tax. Sub-section (1) of Section 20 of the Act clearly indicates that betterment tax is leviable where, as a consequence of execution of any development scheme, the market value of any land in the area comprised in the scheme which is not required for the execution thereof has in the opinion of the B.D.A., increased or will increase, and the B.D.A. shall be entitled to levy on the owner of the land or any person having an interest therein a betterment tax in respect of the increase in value of the land resulting from the execution of such scheme. Sub-section (1) of Section 20 of the Act supports the view that there should be nexus between the levy of tax and the benefit conferred. In so far as the taxes, cesses and fee in question are concerned, there is mot even a mention of such taxes, cesses and fee in the entire Act leave alone the question of expounding the nexus between levy and the benefit conferred directly or indirectly. Though betterment tax is a levy described as a tax, in sum and substance it is nothing but a fee for service rendered directly or indirectly. None of the taxes, cesses and fee are justified or authorised under the provisions of the Act and hence such a levy and recovery is ab initio void.

26. In B. Krishnabhat Vs. Bangalore Development Authority, it was held:-

"....Therefore, publication proposed is mandatory requirement in addition to obtaining sanction by Government. If these requirements are to be dispensed with in so far as the B.D.A. is concerned because it claims power to tax but not the procedural burden, the resultant position is unequal treatment of persons equally placed. For citizens coining within the Corporation area, Corporation must follow the procedure prescribed mandatorily, while the inhabitants of the area coming within the executive control of the B.D.A. need not be admitted to the privilege or right of objection. Such a situation, violative of Article 14, is unthinkable. Therefore, I have no hesitation to reject the contention that by virtue of Notification u/s 29 of the BDA Act only power and not procedural aspect of the power to levy tax is transferred to the B.D.A.

In that view of the matter, the petitioners are bound to succeed as no material is placed before the Court either to demonstrate that the B.D.A. has passed the resolution in question muchless obtained the sanction of the Government and further has published the proposal after such sanction has been obtained for the benefit of the persons who are subjected to the tax.

The fact that they admit the issuance of notices to the owners of the sites or building, a check report invited by their own officers and having determined the retable value of such property assessment completed and demand issued, the BDA itself admits a procedure but not the procedure prescribed by the statute.

In that view of the matter, these Writ Petitions are allowed and a declaration made that respondent Bangalore Development Authority cannot levy property tax or any other tax under the Corporations Act, without following the procedure prescribed under Sections 104 to 106 and subject to other limitations imposed by the provisions of the Corporations Act...."

The said decision is only an authority for the proposition that even if Section 29 of the Act confers taxing power or fiscal power on the B.D.A., that power can only be exercised by due adherence to the provisions of Sections 104 to 106 of the Corporation Act and also further subject to other limitations imposed by the provisions of the Corporation Act. There is no material placed before me to substantiate that the B.D.A. has passed a resolution and has published the proposal for levy of taxes, cesses and fee after the sanction of the Government has been obtained to enable the persons who are subjected to tax to offer their objections. Viewed from any angle, it is not possible to uphold the validity of the levy of taxes, cesses and fees on the members of the public.

27. In the result, for the foregoing reasons, the Writ Petitions are partly allowed. The Bangalore Development Authority (Respondent-1) is directed to stop collecting taxes, cesses, fee, etc., relating to the vacant lands and buildings from the concerned members of the public. The Bangalore Development Authority is liable to refund to the concerned members of the public, the taxes (except betterment tax), cesses and fee collected from them.

