

(2013) 08 MAD CK 0297

In the Madras High Court

Case No : W.A. No"s. 22752 to 22754, 25996 of 2009, 1809, 1856, 1858, 1974, 2020, 2021, 10091, 11171, 10736, 12227 and 14365 of 2011, 334, 337, 35405, 35430 of 2012 and 16116, 5190 of 2013

D. Manikandan and Another

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 5 CTC 494 : (2013) 7 MLJ 856

Hon'ble Judges : T.S. Sivagnanam, J;R. Banumathi, J

Bench : Division Bench

Advocate : K. Donusami, for Muthumani Doraisami and Kanthavadi V. Doraisami, Abudukumar Rajaratnam, Jayesh B. Doha and V. Kalyanaraman for Aiyar and Dolia, R.S. Pandiyaraj and P.S. Vasanthakumar, Sathish Parasaran and Rahul Balaji for Anup P.S. Shah Law Firm, Suraj Govindaraj and G. Vivekanad, A.K. Mysamy and Associates, R. Parthiban and R. Mohan, for the Appellant; P.H. Aravind Pandiyan, Additional Advocate General assisted by Inbadurai, R. Lakshmi Narayanan, Additional Government Pleader, K. Karthikeyan, Government Advocate, C.V. Shailandhran, Government Advocate, C.K. Vishnupriya and V. Bharathidasan, A. Srijayanthi, R. Rajeswaran and A. Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi and T.S. Sivagnanam, JJ.—The Government of Tamil Nadu during 2007 examined a proposal on the fixation of infrastructure and amenities charges in the context of the rapid developments that were taking place in the State. On consideration of such proposal, the Government was of the view that for ensuring Sustainable Development leading to formation of well planned urban areas and growth centres provision of adequate basic amenities have become essential and there was a necessity to provide adequate funds by establishing an infrastructure and amenities fund with adequate sources of revenue. Accordingly, by a Government order in G.O.Ms. No. 191, dated 1.6.2007, the Government decided to collect infrastructure and basic amenity charges at the rates specified, giving

power to the Director of Town and Country Planning to fix different rates for each of the categories of buildings for different areas taking into account the various aspects of developments including infrastructural needs. The ceiling of the rates was fixed in the said Government Order and the amount payable depended upon the type of building. By a subsequent Government Order in G.O.Ms. No. 215, dated 2.7.2007, the non-FSI and parking area were excluded from the levy of infrastructure and basic amenity charges and the Applicants applying for building plan approval were required to pay 50% of the charges at the first instance and the balance 50% to be collected in two equal installments for which irrevocable Bank Guarantee was to be furnished. By G.O.Ms. No. 4, dated 4.1.2008, a clarification was issued as regards the mode and method of payment. At that juncture, the Government realised that the Government orders, which have been passed for levying and collecting, these charges did not have any statutory backing. Accordingly, the Government introduced the Tamil Nadu Town and Country Planning (Second Amendment) Act, 2007, inserting new Sections 63B & 63C in the Town and Country Planning Act, 1971, which dealt with levy of infrastructure and amenity charges and constitution of State Infrastructure and Amenities Fund respectively. In terms of Section 3 of the Amending Act, the levy of Infrastructure and Amenity Charges any time between 1.6.2007 and the date of publication of the Amending Act in the Government Gazette was deemed to be and to have always been validity levied or collected in accordance with law, as if the Principal Act as amended by the Amending Act 2007 had been in force at all material times. The Government by G.O.Ms. No. 22, dated 25.1.2008, framed Rules u/s 63-B of the Amending Act, namely the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenity Charges) Rules, 2008. In these batch of cases, there is challenge to the newly inserted provisions Sections 63-B & 63-C and the Rules framed u/s 63-B namely the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenity Charges) Rules, 2008. A few of the Petitioners have not questioned the vires of the Amended Act or Rules, but have questioned the levy alone.

2. Few cases in these batch are Writ Appeals arising out of a common Order in W.P. Nos. 21402 of 2010, etc., batch dated 30.6.2011, by which the Writ Court dismissed the Writ Petitions challenging the vires of Sections 63-B & 63-C of the Act and the Rules and the individual Writ Petitions challenging the various orders passed pursuant to the amended provisions were also dismissed. Certain cases, which are tagged along with the batch of Writ Appeals are Writ Petitions filed by promoters and property developers after the Order dated 30.6.2011 by which the batch of cases were dismissed by the Writ Court. Therefore, broadly we have three category of cases before us:

(i) Writ Appeals challenging the common Order dated 30.6.2011 in W.P. No. 21402 of 2010, etc., batch

(ii) Writ Petitions filed challenging the vires of Sections 63-B & 63-C & the Rules and

(iii) Writ Petitions challenging the levy of infrastructure and amenity charges, manner and method the mode, and on certain other grounds.

(iv) In this Judgment and Order Infrastructure and Amenity Charges shall be referred as I & A Charges, the Tamil Nadu Town and Country Planning Act, 1971, as the "Act"; the Tamil Nadu Town and Country Planning (Second Amendment) Act, 2007, as the "Amending Act" and the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenity Charges) Rules, 2008 as the "Rules".

3. Mr. Sathish Parasaran, learned Counsel appearing for the Appellants/ Petitioners challenged the impugned provisions on the following grounds:

(i) The State Government lacks legislative competence to make a law levying I & A Charges as such power vests with the Parliament referable to Entry 97, List 1 of Schedule VII of the Constitution of India. In this regard reliance was placed on the decisions of the Supreme Court in *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, ; and *Nagar Mahapalika Varanasi Vs. Durga Das Bhattacharya and Others*, .

(ii) The impugned levy of I & A Charges is a multiple levy as the promoters/ developers are paying Development Charges u/s 63 of the Act.

(iii) The State has taken a definite stand before the Writ Court that I & A Charges is a fee and not a tax and in such case, there should be broad correlation and the payee should be benefited.

(iv) The reasons assigned by the Government in the various Government order and in the statement and objects of the Amending Act, the nature of levy is in fact a tax and would hardly justify a fee.

(v) The State cannot collect a fee to perform a statutory duty and several of the factors stated in the various Government Orders and the Statement and Object of the Amending Act are all statutory duties to be discharged by the State. In this regard, reliance was placed on the decision of the Division Bench of this Court in *ITC Limited Vs. The State of Tamil Nadu*, .

(vi) Sections 63-B & 63-C are liable to be struck down, as there is no procedure prescribed, no guidelines, no procedure prescribing the manner of recovery, no procedure for the incidence of levy, the assessment and recovery.

(vii) The Respondents have no jurisdiction to invoke Section 56 of the Act and threatened to demolish the building, which otherwise confirms to the Planning permission on the ground of non-payment or short-payment of I&A Charges.

4. Mr. Jayesh B. Dolia, learned Counsel appearing for some of the Writ Petitioners, after referring to the statutory provisions and the Statement of Objects and Reasons in the Amendment Act, submitted that Sections 63-B & 63-C of the Act, has been introduced to levy a tax under the guise of fee. Though the levy of I & A Charges has been made without showing the exact nature of

the services rendered and the expenditure borne by the State and fixation must be rationale and not arbitrary. It is further submitted that levy fixed in the nature of fee should pass the Test of quid pro quo and there should be rationale between levy of a fee and service rendered and the same should be commensurate with the service rendered or provided by the authority. Further, it is submitted that the quantum of I & A Charges must have a nexus with the provisions of the infrastructure and amenities as these charges are in the nature of fees. It is further submitted that impugned levy is expropriatory as well as confiscatory for the reason that on account of the impugned levy legitimate activity involving development of property will suffer multiple levy for the same purpose which cumulatively will have the effect of extracting money from the developer grossly disproportionate to the actual necessity in term of infrastructure. Further, it is submitted that the fixation of I & A Charges bears no rationale nexus to the developmental impact or with the object of the legislation. Further, the Rules are silent about the refund of the amounts collected in the event of refusal of the planning permission or failure or abandonment of the development project. By referring to the averments made in the Counter Affidavit more particularly in Pages 41 & 42, it is submitted that the averments do not indicate as to how much of money was allotted for Sustainable Development of the area which appears to be the object of the levy. Further, it is submitted that though the local bodies within whose jurisdiction, the Petitioners have to put up construction have been impleaded as Respondents, they have not filed any Counter Affidavit, abdicating their duty to establish that the funds collected have been properly used in the area in question and the State funds cannot be utilised for development of an urban area. Further, it is contended that the impugned Act is discriminatory as it attracts only higher order developers as mentioned in the statement of objects and reasons of the impugned Amending Act.

5. Reliance was placed on the decision of the Hon''ble Supreme Court in Vijayalashmi Rice Mill and Others Vs. The Commercial Tax Officers, Palakol and Others, , to support the contentions that there must be co-relation between the fee collected and services intended to be rendered and in the absence of any averments regarding such co-relation is bad in law.

6. The learned Counsel relied upon the decision of the Hon''ble Supreme Court in Bangalore Development Authority Vs. The Air Craft Employees Cooperative Society Ltd. and Others, , wherein the Hon''ble Supreme Court while dismissing the Writ Petition filed by the Respondents therein, directed the State Government to take appropriate decision as to whether the levy of supervision, improvement, examination, and other charges by the Bangalore Development Authority was excessive.

7. Further, it is submitted that mere existence of an alternate remedy will not be a bar for the Petitioner to approach this Court when the action of the Respondents is in violation of Principles of Natural Justice and when the vires of

the Act has been challenged. In support of the said contention, reliance was placed on the decision of the Hon'ble Supreme Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ; and ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, .

8. The learned Additional Advocate General submitted that the aim of levy of I & A Charges is to ensure Sustainable Development leading to the formation of well planned urban areas with all facilities and the Government took a decision in 2007 for collection of these charges for different categories at the rates not exceeding a ceiling limit. The learned Counsel referred to the impugned provisions as well as the various Government Orders, which have been noticed above.

9. It is submitted that the Development Charges imposed u/s 59 of the Act is for a different purpose to be utilised towards the expenditure incurred in the administration of the Act, the cost of acquisition of land for development purpose, towards expenditure for any development or works contemplated in any development and such other matters, whereas I & A Charges are levied and credited to a fund which is a State fund constituted u/s 63-C of the Act. This fund is to meet the impact of development and for ensuring Sustainable Development of urban and rural areas. The funds are to be utilised for the purpose enumerated in Rule 6 of the Rules and when these funds are used for such purposes as stipulated under the Rules, it cannot be stated that there is no quid pro quo. Further, it is submitted that there is no double taxation as alleged by the Petitioners and the impugned provisions do not violate the provisions of Articles 14 & 19(1)(g) of the Constitution. Further, it is submitted that Section 63-B has a direct nexus to the objects sought to be achieved by the Town and Country Planning Act, which is to plan the development and use of urban and rural areas in the State of Tamil Nadu.

10. It is submitted that massive developments are taking place all around the State and the Developers are not providing necessary infrastructure to the residents of the Townships that are being developed and the Government is forced to provide all necessary infrastructure for ensuring Sustainable Development and the financial commitment in this regard is substantial. Further, by relying upon the Counter Affidavit filed by the First Respondent, it is contended that there is full justification to levy and collect I & A Charges and the State Government is empowered to collect those charges and such charges have direct nexus to the object sought to be achieved. It is further submitted that the pith and substance of the impugned provision introduced by the Amending Act is for levy and collection of charges in the nature of fees for the provision of basic infrastructure amenities and to ensure Sustainable Development of urban areas. Reference in this regard was made to the Statement of objects and reasons of the Amending Act and the averments made in the Counter Affidavit. Further, it is submitted that the object of the levy of I & A Charges is clear from the provisions of the Act, the Rules which defines the terms amenities and infrastructure and

that the impost u/s 63-B is on the use or change of use of land or building or development of any land or building. It is submitted that the State Legislature derives legislative competence to enact Section 63-B and the power is traceable to Entries 5, 13, 17 & 66 of List II and Entries 20 & 47 of List III of VII Schedule as well as Article 243H & 243X of the Constitution. The learned Counsel invited our attention to the findings rendered by the learned Single Judge in this regard. In support of his submissions reliance was placed on the decision of the Division Bench of this Court in *Madurai K.K. Nagar Veetu Urimaiyalargal Pothu Nala Sangam Vs. Madurai City Municipal Corporation*, , and the judgment of the Division Bench of the Rajasthan High Court in *Mewar Chamber of Commerce and Industry Vs. Municipal Council and Another*, . It is further submitted that the impugned levy is not a multiple levy and the Development Charge imposed u/s 69 of the Act are utilised for the purposes mentioned u/s 67 of the Act, whereas the I & A Charges levied u/s 63-B are credited into a State fund constituted by the Government u/s 63-C of the Act and utilised for the purposes spelt out in Rule 6 of the Tamil Nadu Town and Country Planning State Infrastructure and Amenities Fund Rules. Therefore, it is submitted that there is no question of multiple levy. It is further submitted that the impugned enactment does not suffer from excessive and unguided delegation as there are sufficient guidelines under the Act which could be culled out from the various provisions, the preamble and statement of objects and reasons of the Amending Act. Reliance was placed on the decision of the Hon''ble Supreme Court in *Delhi Race Club Ltd. Vs. Union of India (UOI) and Others*, . It is further submitted that the developers derive special advantage and there are special burden imposed on Municipal services and therefore, the levy of I & A Charges is fully justified and a similar impost though in the nature of tax was upheld by the Division Bench of the Rajasthan High Court in *Mewar Chamber of Commerce and Industry Vs. Municipal Council and Another*, . As regards the contention regarding quid pro quo, it is submitted that the traditional concept of the doctrine has undergone considerable transition and this aspect has been elaborately dealt by Writ Court by taking note of the decisions of the Hon''ble Supreme Court on the said aspect. Reference was made to the averments in the Counter Affidavit explaining the manner in which the funds collected as I & A Charges has been allocated/utilised and it is submitted that these facts clearly demonstrate the existence of quid pro quo.

11. We have heard the learned Counsel appearing on either side and perused the materials placed on record. Firstly, we shall consider the challenge to the vires of the Amending Act and the Rules framed thereunder.

12. Upon hearing these submissions on either side, the following questions fall for consideration in the cases in which the Constitutional validity of Section 63-B of the Act has been challenged:

(i) Whether the State Government has legislative competence to enact the Amending Act?

(ii) Whether the levy of I & A Charges is a multiple levy as Development Charges are imposed in terms of Sections 59 & 60 of the Act?

(iii) Whether the impugned provision namely Sections 63-B & 63-C of the Act are bad for excessive delegation and lacking in Guidelines.

(iv) Whether fee collected is for the performance of statutory duties by the Respondents and if so, whether there is justification to collect the fee?

(v) Quid pro quo?

13. Question No. (i)

The learned Counsel appearing for the Petitioners by placing reliance on the decision of the Hon''ble Supreme Court in *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, , submitted that the Hon''ble Supreme Court has held that a fee, which is charged on a construction of a building is traceable to Entry 97, List I of the VII Schedule of the Constitution and the Hon''ble Supreme Court has declared that a fee on the construction of the building cannot be traced to any Entry in List II or III of the VII Schedule. Therefore, it is submitted that the impugned Act is clearly unconstitutional as it violates Article 246 of the Constitution.

14. The Appeal before the Hon''ble Supreme Court in the case of *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, , arose out of a judgment passed by the High Court of Delhi, which held that the Building and Other Construction Workers'' (Regulation of Employment and Conditions of Service) Act, 1996, the Central Rules framed thereunder, the Building and Other Construction Workers'' Welfare Cess Act, 1996 and the Cess Rules, 1998, are constitutionally valid and within the competence of Parliament as the levy is a "fee" referable to Schedule VII, List I, Entry 97 of the Constitution.

15. In order to appreciate the law laid down by the Hon''ble Supreme Court in the said case, a brief background of the facts, which led to the Appeal before the Hon''ble Supreme Court has to be seen. The Construction Workers Welfare Act (Central Act) was enacted for purposes among other things to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures. The sole aim of the said Act was for the welfare of building and construction workers, which was directly referable to their constitutionally recognised right to life enshrined under Article 21 of the Constitution. The other enactment which was also a Central enactment, the vires of which was challenged, was enacted for ensuring sufficient funds for the Welfare Boards to undertake the social security schemes and welfare measures. The Cess Act was enacted to provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers'' Welfare Board. It was contended before the Hon''ble Supreme Court on behalf of the Appellant that the impost levied by the Cess Act is a compulsory exaction,

made for a public purpose without reference to any special benefit for the payer of the cess and that there exists no co-relationship between the person paying the cess and the services rendered and therefore, the levy is in effect a tax. Therefore, it was contended that the Cess Act being fully covered by List II, Entry 49 pertaining to taxes on "lands and buildings", the power to levy cess would not be available to Parliament, based on the assumption of residuary power.

16. This contention by the Appellant was resisted by the Respondent, defending the Constitutional validity, submitting that Cess Act is within the legislative competence of Parliament referable to Entry 97 of List I of the VII Schedule. The impugned levy in the said case was attacked on two grounds, firstly, by contending that it is a "tax" and not a "cess" and the second ground being that if it is a "tax", then the tax on "lands and buildings" falling within the ambit of Entry 49, List II of the VII Schedule, ousting the legislative competence of Parliament.

17. The Hon''ble Supreme Court after taking note of the distinction between a "fee" and "tax" as held in the earlier decisions, held as follows:

31. There is no doubt in our mind that the Statement of Objects and Reasons of the Cess Act, clearly spells out the essential purpose, the enactment seeks to achieve i.e. to augment the Welfare Fund under the BOCW Act. The levy of Cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction workers. The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore, applying the principle laid down in the aforesaid decisions of this Court, it is clear that the said levy is a "fee" and not "tax". The said fund is set apart and appropriated specifically for the performance of specified purpose; it is not merged in the public revenues for the benefit of the general public and as such the nexus between the Cess and the purpose for which it is levied gets established, satisfying the element of quid pro quo in the scheme. With these features of the Cess Act in view, the subject levy has to be construed as "fee" and not a "tax". Thus, we uphold and affirm the finding of the High Court on the issue.

18. The Hon''ble Supreme Court observed that the funds collected is directed for the purpose spelt in the Welfare Act and such a levy is a fee and not tax, as the said fund is set apart and appropriated specifically for performance of specified purpose and not merged in public revenues for the benefit of the general public and as such the nexus between the Cess and the purpose for which it is levied gets established, specifying the element of quid pro quo. In the said decision, the Hon''ble Supreme Court having reached a conclusion that the levy is in effect a fee and not a tax held that it is unnecessary to deal with the second limb of challenge namely, the impost is a tax on lands and buildings covered by Entry 49, List II of the VII Schedule. Thus, the Hon''ble Supreme Court did not decide the question as to whether the said impugned levy is referable to Entry 49 of List

II, but proceeded to consider the question as to whether the impugned levy was a tax or a fee and held that it was a fee. The Hon''ble Supreme Court considered the object of the said legislation, which was enacted to provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers'' Welfare Boards constituted by the State Government under an Ordinance. In contra-distinction, the object of the impugned enactment is on the user of the land or building or development of any land or building and by adopting the user pay concept as one of the solution for sustainable development the impugned Amending Act came to be introduced. Therefore, the object of the Amending Act is not on the cost of construction as in the case of the enactment considered by the Hon''ble Supreme Court in *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, , which was based on the cost of construction. The subtle yet the distinct difference between the two statutes namely, the statute which fell for consideration before the Hon''ble Supreme Court and the statute which we are called upon to examine as regards the vires cannot be lost sight of. Therefore, the said decision does not render any support to the contention raised by the learned Counsel appearing for the Petitioner.

19. Though the contention regarding legislative competence of the State to enact the law was raised solely by placing reliance on the decision of the Hon''ble Supreme Court in *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, , yet we shall also examine as to whether the State has got legislative competence to enact the impugned statute, for which purpose the following Constitutional provisions would be relevant.

20. Article 243H deals with power to impose taxes by, and funds of, the Panchayat. In terms of the power conferred under the said Article the Legislature of a State may, by law, authorise a Panchayat to levy, collect and appropriate taxes, duties, tolls and fees in accordance with such procedure and subject to such limits; assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the State Government for such purposes and subject to such conditions and limits; provide for making such grants-in-aid to the Panchayat from the consolidated funds of the State; and provide for constitution of such funds for crediting all moneys received by or on behalf of the Panchayat and also for the withdrawal of such moneys therefrom, as may be specified in the law. Article 243X deals with power to impose taxes by, and funds of, the Municipality and it is in *pari materia* with Article 243H.

21. In terms of Article 246(1) of the Constitution, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the VII Schedule referred to as the "Union list". In terms of Article 246(2) notwithstanding anything in Article 246(3) and subject to Article 246(1), the legislature of a State also, have power to make laws in respect of any of the matters enumerated in List III in VII Schedule referred as the "Concurrent List". In terms of Article 246(3), subject to Clauses (1) & (2) & Article 246, the

legislature of the State has exclusive power to make laws for such State or any part thereof with respect of any of the matters enumerated in List II in the 7th Schedule referred to as the "State List". In terms of Clause 4 of Article 246, the Parliament has power to make laws with respect to matter for any part of the territory of the India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

22. Entry 99 List I and Entry 66, List II are residuary entries. Entry 97 List I deals with any other matter not enumerated in List II or List III including any tax not mentioned in either of those List. Entry 66, List II deals with fees in respect of any of the matters in List II, but not including fees taken in any Court.

23. We have to examine as to whether the impugned legislation falls within any of the legislative entries enumerated under List II. We find force in the submission of the learned Additional Advocate General that the impugned enactment is intra vires the power of the State under List II by a mere perusal of a following entries in List II namely Entry 5, which deals with Local Government, Entry 13 dealing with communications, which includes roads, bridges and other means of communication not specified in List I and Entry 17 which deals with Water Supplies, Irrigation and Canals and Drainage and enbankment, etc., and Entry 66 in respect of fees in respect of any matter not mentioned in List II. Similarly, Entry 20 of List III namely, the Concurrent List, which relates to economy and social planning and Entry 47, which is a residuary Entry in List III dealing with fee in respect of any matter in List III.

24. The Statement of Objects and Reasons appended to the Bill for Amending the Act observed that in the process of development, private developers are playing a key role and while doing so they also derive appreciable gains and such development requires high order infrastructure like international standard transport facilities, new source of water supply system, connecting sewerage and drainage to the trunk system, creation of environment friendly atmosphere at the local as well as regional level which require huge capital outlay. It was further observed that the concerned local bodies find it difficult to cater to the needs for infrastructure facilities even at the local level, even though the development provides outlets to the growth of the cities. Therefore, it was felt that some kind of institutional arrangement for mobilisation and provision of higher order infrastructure at the regional level is necessary. That the developers, develop properties without providing basic infrastructure and under such circumstances, user pay concept is one of the solutions for sustainable development. Hence, the Government ordered for collection of I & A Charges. Therefore, the object of such levy was on the nature of user of the land or building with a view to bring about higher order infrastructure akin to international standards and such power is clearly traceable to Entries 13, 17, 66 of List II and Entries 20 & 47 of List III.

25. Thus, a combined reading of Entries 13, 17 & 66 of List II and Entries 20 & 47 of List III, the State has power to levy a fee in the nature of infrastructural and amenities charges for the purpose of creating infrastructure and to cater to

the needs of the people in respect of basic amenities. More particularly when the levy is on the nature of use of the land or building.

26. Section 2(2) of the Act defines amenities to include streets, open space, parks, recreation grounds, street lighting, sewerage, drainage, etc. Rule 2(d) of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, defines infrastructure to mean the sum of technical installation and social institutions creating a basis for human activities. Specifically, it is the physical equipment needed to provide service such as transport, power and water supply sewerage, drainage, communications and access. Thus, it follows that the State executive may pass orders regulating any matter within the legislative competence of the State Legislature and the impugned legislation is wholly within the competence of the State Legislature. Therefore, the Question No. 1 is decided against the Petitioners and the impugned provisions are held to be intra vires the State Legislature.

27. Question No. (ii):

The Petitioners/Appellants contended that all of them are paying Development Charges levied u/s 59 of the Act and simultaneous levy of I & A Charges, apart from payment of Water Tax and Sewerage Tax in addition to Development Charges amounts to a multiple levy and therefore cannot be sustained. Section 59 deals with "levy of Development Charges" by virtue of such provision every Planning Authority including a Local Authority shall levy Development Charges on the institution of use or change of use of land or building or development of any land or building for which permission is required under the Act. In Anjali, Manjula, Easwari and Padmavathy Vs. The Secretary to the Government, Prohibition and Excise Dept. and The Commissioner of Police, , the developers and builders challenged the levy of Infrastructure and Development Charges on behalf of CMWSSB contending that the same is ultra vires, unconstitutional, arbitrary and unreasonable. The Division Bench of this Court after analysing the provisions of the CMWSSB Act and the Town and Country Planning Act held that the infrastructure Development Charges levied by CMWSSB is only for the service rendered and to strengthen and maintain the water supply and sewerage infrastructure. The Division Bench took note of the increasing population and sudden rise in building activities, the CMWSSB has to lay main lines to take water from various sources and sewer lines to take the drain water outside the habitation for which undoubtedly huge resources are required. Most importantly the Division Bench noticed that the claim of Infrastructure Development Charge is not applicable to all buildings and it applies only to special and multi-storied buildings and in such circumstances held that it cannot be contended that the demand of Infrastructure and Development Charge has no nexus to the main scheme of the Act. While upholding the said amendment to the CMWSSB Act, the Division Bench held as hereunder:

18. Before winding up, we deem it necessary to summarise our views. If a legislation is based on equity, reasonableness and well accepted general

principles, just by colouring them to have stained with unconstitutionality or arbitrariness, the same cannot be defeated/struck down ignoring the public interest and policy involved in such legislation. In the cases on hand, we find no substance whatsoever in any of the pleas projected by the Petitioners due to various reasons adverted to. In the modern society, one cannot imagine of a dwelling area without civic amenities. Burden mounts on the Government when bloom water scarcity and other related civic exigencies, having adverse impact on the society as a whole and the Governments undergo limitless pressure in finding solutions therefor. Any act of the Government or its agencies to provide better facilities to the entire society by properly and reasonably balancing between the interests of two sets of citizens cannot be allowed to be canvassed as unconstitutional so as to benefit one particular group of persons. One cannot feign ignorance of the various activities of the Government, which are rather gigantic and burdensome in nature, towards providing better civic amenities viz., drawing water from various sources to combat the challenges during water scarcity by spending considerable portion of revenue towards installation of adequate infrastructure, and also their effort to balance between ecology and clearing the sewage by establishing treatment plants therefor. The other important aspect is, a "multistoreyed building" or a "special building" cannot be treated on par with an individual dwelling. Such high buildings house large number of people compared to ordinary houses and their water consumption level and discharge level (of sewage) are very high and, in case of any failure in the discharge system or other problems, to remedy the same, a large portion of money is to be spent, sometimes, the process requires replacement of the entire infrastructure, hence, the measures brought in by way of impugned provisions, which are only to render effective service to the public and to provide quality-oriented service to one and all irrespective of the more level of damage caused to the infrastructure by the multistoreyed buildings and special buildings, can never be underestimated to defeat the public cause at the cost of benefit to some individuals. Our earlier discussion on the relevant aspects would lead to the only conclusion that the impugned provisions are in no way unconstitutional, ultra vires or arbitrary, instead, they are based on equity and public interest, enabling the authorities to serve better the entire society.

28. The aforementioned decision of the Division Bench was affirmed by the Hon'ble Supreme Court in *M. Chandru Vs. The Member Secretary, Chennai Metropolitan Development Authority and Another*, . From the above referred decision and from Section 67 of the Act, we have seen the purpose, object and intent of the levy of Development Charge u/s 59 of the Act. The levy of I & A Charges u/s 63-B is for entirely a different purpose which is noticed from the very provision, for the purpose of meeting the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities at the rates as determined. The I & A Charges are leviable on a person who undertakes development or institute any use or charges any such use.

29. Rule 2(d) defines "infrastructure" to mean the sum of technical installation and social institutions creating a basis for human activities. Specifically, it is the physical equipment needed to provide service such as transport, power and water supply sewerage, drainage, communications and access.

30. Rule 2(e) defines "multi-storeyed building" to mean a building having more than 4 floors including the ground floor or if the ground floor is used for parking under stilts, then excluding the ground floor, whose height is 15 metres or more:

31. Rule 2(f) defines "special building", to mean a building having more than two floors but not exceeding 4 floors inclusive of ground floor or a building with basement or stilt floor and 4 floors or a residential building having more than 4 dwelling units or a building accommodating commercial or industrial or institutional or combination of such activities with a floor area exceeding 300 square metres. In terms of Rule 4, I & A Charges shall be collected for new construction, additions to existing construction and change of use of existing buildings at the rates indicated. The fixation of rates of charges under Rule 5, shall be made taking into account the various aspect of the development including infrastructure needs.

32. In terms of Section 63-C, the Government may constitute a fund called State infrastructure and Amenities Fund to provide infrastructure and basic amenities so as to meet the impact on development and for ensuring sustainable development of urban and rural areas. In terms of sub-section (2) of Section 63-C, the I & A Charges levied u/s 63-B shall be credited to the said fund, the fund shall be operated, utilised and maintained in such manner as may be prescribed. The prescription is in terms of the Tamil Nadu Town and Country Planning State Infrastructure and Amenities Fund Rules, 2008. The fund is to be administered by a Committee consisting of the following officials as per Rule 3(i) of the Rules:

1. Secretary to Government, Housing and Urban Development Department - Chairman
2. Secretary to Government, Finance Department - Member
3. Secretary to Government, Planning and Development and Special Initiative Department - Member
4. Secretary to Government, Rural Development and Panchayat Raj Department - Member
5. Secretary to Government, Municipal Administration and Water Supply Department - Member
6. Chairman of the Chennai Metropolitan Development Authority -Member
7. Director of Town and Country Planning - Member Secretary.

33. Rule 6 would be relevant and is quoted hereunder:

Utilisation of the fund.--

(1) Monies from the fund may be advanced by the Government as grants, on such terms and conditions as the Government may determine, to the planning Authorities or the Local Authorities or the Government agencies or the parastatal organisations or such other organizations, as the case may be, for implementing the infrastructure and amenities projects, which may include:

- (a) preparation of infrastructure investment plans;
- (b) execution of the infrastructure investment plans in full or part;
- (c) any purpose incidental to the preparation or execution of infrastructure investment plans.

(2) The fund shall be utilised for translating the proposals of the respective development plans prepared in accordance with the provisions of the Act, into specific action programmes.

(3) Projects to be funded from the fund shall comprise essential Infrastructure Schemes. The Committee shall decide the Scheme to be implemented.

(4) The Committee may sanction funds to the implementing agencies or Planning Authorities or the Local Authorities or the Government agencies through the Planning Authorities or the Local Authorities, as the case may be, upto five crore rupees per Scheme on capital expenditure and upto twenty lakh rupees on other items. The Committee shall approach the Government for sanction of proposals, beyond this limit. For sanction of funds exceeding the said limits, the Committee shall obtain the previous approval of the Government

(5) Expenditure for administration, establishment or contingency all put together shall not exceed 5% of the total corpus of the fund available at any given time.

34. Thus, on a perusal of the above provisions, it is manifestly clear that there is marked distinction between the levy of Development Charges u/s 59 of the Act which is to be utilised in accordance with Section 67 of the Act and the levy of I & A Charges u/s 63-B of the Act is to be utilised in the manner provided u/s 63-C read with Rule 6 of the Infrastructural Fund Rules, 2008 and the fund being administered by a Committee as constituted under Rule 3. Therefore, we have no hesitation to hold that the levy of I & A Charges does not amount to a multiple levy, but a levy with a distinct purpose, object and intent. Accordingly, Question No. (ii) is decided against the Petitioners.

35. Question No. (iii):

The Hon''ble Supreme Court in *The Consumer Action Group and Another Vs. State of Tamil Nadu and Others*, , considered this question under the same enactment, namely, the Town and Country Planning Act as to whether it suffers from the vires of excessive delegation. Summarising the legal position, the Hon''ble Supreme Court held:

- (a) In spite of very wide power being conferred in delegatee such Section would

not be ultra vires, if guidelines could be gathered from the preamble, object and reasons and other provisions of the Act and Rules.

(b) While testing the validity of such provision, Courts have to discover whether there is any legislative policy purpose of the statute or indication of any clear will through its various provisions, if there is such policy/purpose indicated, this by itself would be a guiding factor to be exercised by the delegatee.

(c) Such power cannot be stated to be unbridled or uncanalised as the exercise of such delegatee is controlled through such policy.

36. In order to test as to whether the impugned enactment suffers from excessive delegation, we have to consider as to whether the broad test laid down by the Hon''ble Supreme Court in the aforementioned decision are satisfied. In the same decision, the Hon''ble Supreme Court has observed that in the fast changing scenario of economic, social order with scientific development spawns innumerable situations, which Legislature could not foresee, so the delegatee is entrusted with power to meet such exigencies within the in-built check or guidance. That all situation cannot be culled out, which have to be judiciously judged and exercised to meet any such great hardship of any individual or institution or conversely in the interest of society at large. Further, it was held that a situation may arise, in some cases where strict adherence to any provision of statute or Rules may result in great hardship, in a given new situation.

37. Bearing the above legal principle in mind, we shall proceed to look into the preamble of the Act, which reads as follows:

An Act to provide for planning the development and uses of rural and urban land in the State of Tamil Nadu and for purposes connected therewith.

38. The impugned provisions were inserted by Amending Act 34 of 2007, we would usefully refer to the Statement of Objects and Reasons for the amendment, which reads as hereunder:

Bill No. 38 of 2006

TAMIL NADU TOWN AND COUNTRY PLANNING (SECOND AMENDMENT) ACT, 2007

Statement of Objects & Reasons

The urban areas are under stress due to the recent trend of industrial and economic development and the growth is beyond the defined planning unit of urban authority into the peri-urban areas and are developing at a fast pace. These areas are in a process of urbanisation and therefore, progressively assume many of the characteristics of urban areas. It is transition zone where rural and urban land uses are mixed and there is a rapid conversion of rural land to urban purposes.

2. In the process of development, private developers are playing key role and put in their efforts in the actual provision of industry construction and accessory

developments like commercial, residential, recreational, etc., while they swing for the process of these sectors, they also derive appreciable gains in the process. The development requires high order infrastructure like international standard transport facilities, new source of water supply system, connecting sewerage and drainage to the trunk system, creation of environment friendly atmosphere at the local as well as regional level which require huge capital outlay. The concerned local bodies find it difficult to cater to the needs for infrastructure facilities even at the local level, even though the development provide outlets to the growth of the cities. In view of the above, some kind of institutional arrangement for mobilisation and provision of higher order infrastructure at the regional level is thought of. At present, developers develop properties without providing basic infrastructure. Under these circumstances, the user pay concept is one of the solutions for sustainable development. In these specific cases, major participation of developers in the provision of infrastructure is essential, as they derive the main benefit out of these developments. Hence, the Government, after detailed examination of the facts of the ground reality, has ordered in G.O.Ms. No. 191, Housing and Urban Development [UD4(2)] Department, dated 1.6.2007 for the collection of infrastructure and basic amenities charges from the higher order developers.

3. The Government have decided to amend the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) suitably.

4. The Bill seeks to give effect to the above decision.

39. In exercise of the powers conferred u/s 122(2)(bb) read with Section 63-B of the Act, Rules have been framed in 2008 called as the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008. Rule 2(c) defines group development; Rule 2(d) defines infrastructure; Rule 3 deals with assessment and levy of infrastructure and amenity charges; Rule 4 deals with the manner of collection of I & A Charges for new constructions, additions to existing constructions, etc; Rule 5 deals with fixation of rates of charges; Rule 6 relating to mode of Application for permission; Rule 7, the procedure for determination of I & A Charges; Rule 8 the power to make a final assessment of I & A Charges; Rule 9 for payment of I & A Charges and Rule 10 provides for Appeal to the Designated Authority. The statutory forms are also appended to the Rules, which provides for the form of Application for assessment of I & A Charges, provisional notice of assessment and notice of demand. By applying the legal principle laid down by the Hon''ble Supreme Court in the case of Consumer Action Group, referred supra, it can hardly be stated that the impugned enactment namely the newly inserted Section 63-B of the Act and the Rules framed thereunder lacks guidelines. As pointed out by the Hon''ble Supreme Court if Guidelines could be gathered from the Preamble, Objects and Reasons and other provisions of the Act and Rules and if the Court is able to discover that there is a Legislative Policy, then it could be considered as a guiding factor to be exercised by the delegatee.

40. In *Delhi Race Club Ltd. Vs. Union of India (UOI) and Others*, , the validity of the Delhi Race Course Licensing (Amendment) Rules came up for consideration. One of the contention raised before the Hon''ble Supreme Court was that the delegation of power u/s 11 of the Mysore Race Courses Licensing Act, 1952, which was extended to the Union Territory of Delhi suffers from excessive delegation of powers to the Lt. Governor to fix licence fee without any Guidelines. The Hon''ble Supreme Court after considering several decisions wherein the question as to the limits of permissible delegation of legislative power by a legislature to an executive/another body culled out two broad principles as under:

30. From the conspectus of the views on the question of nature and extent of delegation of legislative functions by the legislature, two broad principles emerge viz.--

(i) that delegation of non-essential legislative function of fixation of rate of imposts is a necessity to meet the multifarious demands of a welfare State, but while delegating such a function laying down of a clear legislative policy is prerequisite, and

(ii) while delegating the power of fixation of rate of tax, there must be in existence, inter alia, some guidance, control, safeguards and checks in the Act concerned.

It is manifest that the question of application of the second principle will not arise unless the impost is a tax. Therefore, as long as the legislative policy is defined in clear terms, which provides guidance to the delegate, such delegation of a non-essential legislative function is permissible. Hence, besides the general principle that while delegating a legislative function, there should be a clear legislative policy, these judgments, which were vociferously relied upon before us, will have no bearing unless the levy involved is tax.

41. In terms of the decision of the Hon''ble Supreme Court, quoted above, that while delegating a legislative function, there should be a clear legislative policy, however, the same does not have any bearing unless the levy involved is tax. In the earlier part of this order, we have analysed the provisions of the Principal Act, Amending Act, the Rules as well as the Infrastructure Fund Rules 2008, and we found that the delegation of fixation of rate of fee is necessary to meet the multifarious demands and there is sufficient guidelines, control, safeguards, checks and balances. As per the decision of the Hon''ble Supreme Court in the case of *Delhi Race Club Ltd. Vs. Union of India (UOI) and Others*, , these principles based on which a delegation of a legislative function is tested shall have a bearing only if the impost is a tax and in the cases on hand admittedly the charges levied is a fee.

42. Perusal of the Statement of Objects and Reasons of the Amending Act clearly spells out the legislative policy for introducing such a levy. Furthermore, the scheme of the Rules also provide for a clear guidance as to how the charges have

to be assessed, levied and collected. If a individual developer is aggrieved by the manner in which such levy has been computed, he has to question the same independently and that cannot be a ground to declare the impugned statute as ultra vires. Therefore, we have no hesitation to hold that the impugned provision has sufficient in-built Guidelines and it does not suffer from any unguided, uncanalised power of excessive delegation. Accordingly, Question No. (iii) is also decided against the Petitioner.

43. Question No. (iv):

It was argued that providing water and sewerage facilities to the land owners and the developers is a public duty statutorily imposed on the CMWSSB/TWAD Board and such statutory duty cannot be made subject to payment of exorbitant sums under the guise of I & A Charges. The Respondent State would justify the levy by contending that the I & A Charges are levied only for a particular type of construction, where certain special privileges are granted and therefore, there is every justification to levy the I & A Charges. Reliance was placed on the decision of the Division Bench of this Court in *Madurai K.K. Nagar Veetu Urimaiyalargal Pothu Nala Sangam Vs. Madurai City Municipal Corporation*, , and the decision of the Division Bench of the Rajasthan High Court in *Mewar Chamber of Commerce and Industry Vs. Municipal Council and Another*, .

44. In the case of *Madurai K.K. Nagar Veetu Urimaiyalargal Pothu Nala Sangam Vs. Madurai City Municipal Corporation*, , the question which fell for consideration is whether the Madurai City Municipal Corporation is empowered to levy drainage charges and whether it can claim non-refundable security deposit for underground drainage connection. The said levy was imposed by way of an executive instructions in the form of the Government Order. The Division Bench after analysing the factual position and the legal contentions held that the validity of the Government Order impugned in the said case cannot be tested on the provisions of the Madurai City Municipal Corporation Act and the power of the Corporation to levy fee is traceable to Article 243X of the Constitution. After taking note of the Entry 5 and Entry 66 of List II and Entry 20, List III of the VII Schedule of the Constitution, the Division Bench held that the State Legislature has power to levy fees for social and economic planning and for urban development. Further, it was held that with the increasing urbanization in and around Madurai City, to effectuate its statutory obligation for providing drainage, the Madurai Corporation is empowered to collect the appropriate charges. The Division Bench also took into consideration the decision of the Hon"ble Supreme Court in *Dewan Chand Builders and Contractors Vs. Union of India (UOI) and Others*, .

45. In *Mewar Chamber of Commerce and Industry Vs. Municipal Council and Another*, , the Division Bench of the Rajasthan High Court was testing the validity of a Rule framed under the Rajasthan Municipalities Act levying tax on trades and callings carried on within the Municipality and deriving special advantages from or imposing special burden on Municipal Service. The said Rule was challenged

on the ground that the State Legislature lacks legislative competence to frame a law imposing tax on trades and callings. The Division Bench after analysing the relevant statutory enactments vis-?-vis Entry 5 of List II of VII Schedule and Article 243X of the Constitution held that the burden of the Municipal Service is onerous and the levy is justifiable in view of Entry 5 of List II of VII Schedule and Article 243X of the Constitution, as the purpose of such levy is to ease the burden of the local body.

46. It is true that the right to develop a property has been read into as a Constitutional right, but such right is not unfettered, but subject to restrictions and regulations. Planning laws with stringent conditions fall within the ambit of reasonable restrictions so as to ensure orderly development of properties. Therefore, merely because Appellants/Petitioners have acquired interest in vast extent of land, as a matter of right cannot claim that they would be entitled to construct buildings consisting of any number of floors and compel the authorities to grant permission in the absence of any statutory Rule or Regulations permitting such development. Therefore, when such large scale development of properties are being done with several floors, the Government thought fit to consider those cases as special case and by taking note of the impact that would be caused to the other parameters decided to levy and collect I & A Charges. As held in the case before the Rajasthan High Court, the benefit or in other words advantages enjoyed by the Petitioner/Appellants is a special advantage and simultaneously there is additional burden on the Municipal services while extending such special advantage to developers like that of the Petitioners/Appellants. Therefore, the State would be justified in levying the infrastructure and amending charges while extending the special benefits/privileges to promoters like that of the Petitioners/Appellants.

47. From the Counter Affidavit filed in the Writ Petition as well as the Writ Appeals, we find that the funds so collected by way of I & A Charges have been spent on various infrastructural activities both in the Chennai Metropolitan area and the Directorate of Town and Country Planning area. For better appreciation, the same is quoted herein below:

Infrastructure and Amenities Charges Collection and Expenditure Statement

Projects utilizing Infrastructure and Amenities Fund I. Chennai Metropolitan Area

(2) Directorate of Town and Country Planning area

48. From the above details, it is clear that the I & A Charges, which have been collected have been utilised for specified purposes to provide adequate infrastructure and basic amenities so as to meet the impact on development and for ensuring sustained development of not only urban area, but rural area as well. Therefore, the contention raised stating that the fee collected as I & A Charges is the charges towards performance of statutory duty cannot be countenanced and accordingly Question No. (iv) is decided against the Petitioner.

49. Question No. (v):

The Petitioners/Appellants strenuously contended that the State has not produced any material to justify the levy of I & A Charges and when the impugned levy is a fee, then quid pro quo is a sine-qua-non, which is clearly absent in the instant case. Reliance was placed on the decision of the Hon"ble Supreme Court in *M. Chandru Vs. The Member Secretary, Chennai Metropolitan Development Authority and Another*, and the decision of the Constitution Bench of the Hon"ble Supreme Court in *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others*, .

50. We have noticed the averments made in the Counter Affidavit giving details of the expenditure made from the funds collected as I & A Charges and the tabulated statement has been extracted above. The Hon"ble Supreme Court in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, , while considering the actual quid pro quo between the services rendered and the payer of the fee held as follows:

31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, correlation ship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decisions of this Court drawing a distinction between a "tax" and a "fee". (See: *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*; *H.H. Sudhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments, Mysore*; *The Hingir-Rampur Coal Co. Ltd. v. State of Orissa*; *H.H. Shri Swamiji of Shri Admar Mutt v. Commissioner. Hindu Religious and Charitable Endowments Department*; *Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala*; and *Municipal Corporation of Delhi v. Mohd. Yasin.*)

32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or

want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the Shirur Mutt case was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax: Constitutional Law of India by H.M. Seervai, Vol. 2, 2nd Edn., p. 1252.

51. In *B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc.*, , while considering the Concept of quid pro quo in a fee, the Hon"ble Supreme Court held as follows:

30. This Court in the case of *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, , has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, , is only an obiter.

38. As noticed in the *City Corpn. of Calicut* the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is

concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in *Sirsilk Ltd. Vs. Textiles Committee and Others*, , if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute u/s 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered u/s 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone.

40. ...Once the levy is in public interest and connected with the larger trade in which the contributories are involved then confining the services only to the contributories does not arise, as has been held by this Court in *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, . Applying the said principle, we are of the opinion that since the amount collected under the impugned levy is being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to the contributories i.e. the Petitioners would not make the levy invalid.

52. In the light of the above legal principles, the impugned levy cannot be held to be illegal as the benefit of the levy does not accrue to the payee. Therefore, contention raised by the Petitioners that they have invested several crores of rupees in the development and paid substantial amount of money as I & A Charges and not even a part of the funds is utilised for development of the area in which the Petitioners have carried out the construction activities cannot be countenanced, in the light of the law laid down by the Hon''ble Supreme Court referred supra, therefore such contention does not merit acceptance.

53. As rightly held by the learned Judge, the I & A Charges is a fee and in terms of the Rules, the levy is based on per sq.m., and different types of building were charged different levies and the Counter Affidavit has explained the necessity to charge the said fee and the earlier distinction between maximum and minimum has also been done away with and there is a distinction between the Chennai Metropolitan area and other areas.

54. The legal principle that it is not necessary that the service to be rendered by the collecting authority should be confined to the contributories alone has been well settled and the Hon''ble Supreme Court in *Sona Chandi Oal Committee and Others Vs. State of Maharashtra*, , culled out the legal principle as under:

22. A Three-Judge Bench of this Court in *B.S.E. Brokers' Forum v. Securities and Exchange Board of India* after considering a large number of authorities, has held that much ice has melted in the Himalayas after the rendering of the earlier judgments as there was a sea change in the judicial thinking as to the difference between a tax and a fee since then. Placing reliance on the following judgments of this Court in the last 20 years, namely, *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, ; *City Corporation of Calicut Vs. Thachambalath Sadasivan and Others*, ; *Sirsilk Ltd. Vs. Textiles Committee and Others*, ; *Commissioner and Secretary to Govt., Commercial Taxes and Religious Endowments Department and others Vs. Sree Murugan Financing Corporation, Coimbatore and others*, ; *Secretary to Government of Madras and another Vs. P.R. Sriramulu and another*, ; *Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others*, ; *Research Foundation for Science, Technology and Ecology v. Ministry of Agriculture* , (1999) 1 SCC 655 ; and *Secunderabad Hyderabad Hotel Owners Association and Others Vs. Hyderabad Municipal Corporation, Hyderabad and Another* , it was held that the traditional concept of *quid pro quo* in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. *Quid pro quo* in the strict sense was not always a *sine qua non* for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. It was observed that it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid. It was held that if one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting the fee is satisfied.

55. The learned Counsel for the Petitioners relied on the decision in *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others* , to contend that the impugned levy being in the nature of a fee simpliciter would require the existence of a *quid pro quo*, which is clearly absent in the cases on hand. The Hon'ble Supreme Court in *Jindal Stainless Ltd.*, while summing up the judiciously evolved Concept of Compensatory Tax held that the basis of every levy is the controlling factor and in case of a fee, the basis is the special benefit to the payer based on the Principle of Equivalence. The Theory of Equivalence cannot be in the abstract, but to be judged in the context of the relevant statute its intent, object and purpose.

56. As noticed above, I & A Charges are not levied on all types and categories of Buildings and Developments, they are levied only on multi-storied construction,

commercial buildings, group developments, etc. Under normal circumstances, a owner of the property cannot claim a vested right to put up multi-storeyed construction, commercial buildings, group development, etc., as the type of construction is regulated based on the Planning Laws in vogue. The levy of I & A Charges is to meet the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities. The assessment and levy of I & A Charges is on the institution of use or change of use of land or building or all development of any land or building. Therefore, the levy is on change of use of land or building and such levy is only for multi-storeyed buildings, commercial buildings, information technology buildings, industrial or institutional buildings, group developments, special buildings as defined under Rule 2(c), (e) & (f). Therefore, the controlling factor for the impugned levy is the special benefit, which is given to the developer of a group development, multi-storied building and a special building and the benefit given to the promoter is based on the principle of equivalence as the State is required to provide infrastructure through out the State to withstand the impact of these special buildings, group developments and multi-storied construction. Therefore, the test laid down in *Jindal Stainless Ltd. and Another Vs. State of Haryana and Others*, stand fully satisfied in the cases on hand and the State has discharged the burden cast upon it.

57. In the light of all the above facts and the averments made in the Counter Affidavit and by applying the legal principle evolved by the Hon'ble Supreme Court we are satisfied that the Respondents have demonstrated the existence of quid pro quo in the collection and utilisation of the I & A Charges. Accordingly, Question No. (v) is also decided against the Petitioners.

58. In the result, we hold that-- i. The State Government has legislative competence to enact Section 63-B of the Amending Act and Rules framed thereunder as such power is traceable to Entries 13, 17 & 66 of List II and Entries 20 & 47 of List III, Schedule VII coupled with the power conferred under Articles 243X & 243H of the Constitution of India.

ii. The levy of Infrastructure and Development Charges as envisaged u/s 63-B of the Amending Act, 2007 does not amount to a multiple levy, but a levy with a distinct purpose, object and intent as envisaged under the Amending Act, 2007.

iii. The impugned provisions, namely Sections 63-B & 63-C of the provisions of the Amending Act, its preamble, Statement of Objects and Reasons and the Rules namely the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 and Tamil Nadu Town and Country Planning State Infrastructure and Amenities Fund Rules, 2008 provides sufficient guidance to the delegate and does not suffer from any unguided or uncanalized power of excessive delegation.

iv. From the facts placed by the Respondents in the Counter Affidavit, it is evident that the impugned levy is for special benefits conferred on the

development of a distinct category of buildings having special burden on the services to be extended consequent on such special benefit and cannot be negated by stating that such services are statutory obligation.

v. In the light of the development of law explaining the Theory of "quid pro quo" and the facts placed by the Respondents, we are convinced that the Test of quid pro quo stands satisfied.

For all the above reasons, the Writ Petitions and Writ Appeals challenging the vires of the impugned enactment are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.