(2016) 11 AHC CK 0045

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 60774 of 2015.

Lavelesh Kumar Mishra and 2 Others - Petitioners @HASH State of U.P. and 3 Others

Date of Decision : 15-11-2016

Acts Referred:

Citation : (2016) 11 ADJ 224 : (2017) 1 AllWC 505 : (2017) 120 ALR 587

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : Kripa Shankar Singh, Advocate, for the Petitioners; Ashish Mohan Srivastava, C.S.C, for the Respondent

Final Decision : Allowed

Judgement

M.C. Tripathi, J. - Lavelesh Kumar Mishra and two others are before this Court for following reliefs:-

"I. Issue a writ, order or direction in the nature of certiorari quashing the demand notices dated 10.07.2015, 28.02.2015 and 06.05.2015 (Annexure Nos.3, 4 & 5 respectively to the writ petition) issued to the petitioners by the Assistant Engineer (Respondent No.4) so far it relates to demanding Subdivision Charge, Internal Development Charge, F.A.R. Charge/ City Development Charge (Purchasable F.A.R. Charge) from the petitioners.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to release the sanctioned map and building permit to the petitioners on deposit of other fees and charges demanded through aforesaid demand notices other than Subdivision charge, Internal development charge, F.A.R. Charge/ City Development Charge (purchasable F.A.R. Charge).

III. Issue a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful construction of the group housing building by the petitioners in pursuance of the sanctioned plan and building permit aforesaid in accordance with law in any manner."

2. The Varanasi Development Authority, Varanasi (in short "VDA") is a development authority declared under Section 4 of the Uttar Pradesh Urban Planning and Development Act, 1973 (in short "the Act of 1973") and was notified in exercise of power under Section 3 of the Act of 1973 by the State Government by Gazette Notification dated 20th August, 1974. All the petitioners had filed plans for grant of sanction under Section 14 of the Act of 1973. The demand has been made by VDA to deposit the fees under various heads.

3. It is relevant to indicate that the State of U.P. had also issued model bye-laws, which was adopted by most of the development authorities including VDA, which is known as ''Development Authority Building Construction and Development Bye-laws, 2008 (in short "Bye-laws of 2008"). Clause 1.2.15 (X) of Bye-laws of 2008 defines Group Housing and provides the criteria, which may determine a building as Group Housing. The details regarding the Group Housing are mentioned in Clause 3.3, whereby minimum area should not be less than 2000 sq. mtr. It also provides the standard of road, park and Floor Area Ratio (FAR). Clause 3.3.6 (III) provides that for a new/undeveloped area, permissible FAR is 2.5 times, whereas in the built up/ developed area the permissible limit of FAR is 1.5 times. It is further relevant to indicate Clause 2.4.2 (II) of the Buy-laws of 2008, which provides that for a group housing in new/ undeveloped area 200 dwelling units per hect. are permissible and 150 dwelling units are permissible in developed area.

4. The FAR has been defined in Clause 1.2.9 and it means quotient obtained by dividing the total covered area (plinth area on all floor).

5. At this stage, it is relevant to have a glance on the relevant provisions contained in the Act of 1973 and various amendments, which have been incorporated in the Act of 1973. The amendments, which have been introduced by U.P. Act No.3 of 1997 and U.P. Act No.1 of 2008 are as follows:-

"City development charge has been defined under Section 2 (ddd). Development fee has been defined under Section 2 (ggg). Section 2 (ii) defines mutation charges. Section 2 (kk) defines stacking fees. Section 2 (ll) defines water fees. Amended Section 15 (2-A) of Act, 1973 provides for levy of development fees, mutation charges, stacking fees and water fees. 3rd Proviso to Section 15 (3) of Act, 1973 confers a right upon the Development Authority to get the fees and charges levied under sub-section (2-A) deposited before granting permission as required under Section 14 of Act, 1973."

The amendments made in the definition clause of Act, 1973 read as follows:

"2. Definitions. - In this Act unless the context otherwise requires--

...

(ddd) ''city development charge'' means the charge levied on a private developer under Section 38-A for the development of the land;

(ggg) ''development fee'' means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water-supply lines in the development area by the Development Authority;

(ii) "mutation charges" means the charges levied under Section 15 upon the person seeking mutation in his name of a property allotted by the Authority to another person;

[(kk) "stacking fees" means the fees levied under Section 15 upon the person or body who keeps building materials on the land of the Authority or on a public street or public place;

[(ll) "water fees" means the fees levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of buildings;]"

The other provisions of the Act, 1973 relevant for resolving the issue involved are:

" Section 7. Objects of the Authority.- The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

Provided that save as provided. In this Act nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."

6. Section 8 of the Act, 1973 contemplates the preparation of the master plan for the development area and Section 9 of the Act, 1973 provides for the Zonal development plans. The sections read as follow:-

"8. Civil survey of, and master plan for the development area:-

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.

(2) The master plan shall-define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and serve as a basic pattern of framework within which the Zonal development plans of the various zones may be prepared.

(3) The master plan may provide for any other matter which may be necessary for the proper development of the development area.

9. Zonal Development plans.-

(1) Simultaneously with the preparation of the master plan or as soon as may be thereafter, the Authority shall proceed with the preparation of a zonal development" plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may-

(a) contain a site-plan and use-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

(c) show every area in the zone which may, in the opinion of the Authority, be required or declared for development or re-development; and

(d) In particular, contain, provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes:

(iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out,

(iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings:

(v) the alignment of buildings of any site;

(vi) the architectural features of the elevation or frontage of any building to be erected on any site,

(vii) the number of residential buildings which may be erected on plot or site;

(viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided:

(ix) the prohibitions or restrictions regarding erection of shops work-shops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality,

(x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained:

(xi) the restrictions regarding the use of any site for purposes other than erection of buildings;

(xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area."

Section 10 of the Act, 1973 contemplates submission of the plans to the State Government and its power to issue directions in the matter of the modification etc. of such plans.

Section 11 of the Act, 1973 provides for the approval of the plans by the State Government.

Section 14 of the Act, 1973 deals with the development of land in the development area and prohibits any development activities being undertaken or continued except in accordance with the plans and without approval of the development authority.

Section 15 of the Act, 1973 provides for making of an application in writing before the Vice-Chairman for permission under Section 14 in such manner, as may be prescribed by bye-laws and has to contain such particulars, as may be prescribed by rules. Sub-section (2-A) of Section 15 permits levy of development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.

Relevant portion of Section 15 (2-A) of Act, 1973 is quoted below:-

"15. Application for permission.-(1) Every person or body (other than any department of Government or any local authority) desiring to obtain the permission referred to in Section 14 shall make an application in writing to the [Vice-Chairman] in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by (bye-laws].

(2) Every application under sub-section (1) shall be accompanied by such particulars as may be prescribed by rules.

[(2-A) The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed :

Provided that the amount of stacking fees levied in respect of an area which is not being developed or has not been developed, by the Authority, shall be transferred to the local authority within whose local limits such area is situated.]

(3) On the receipt of an application for permission under sub-section (1), the [Vice-chairman] after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of Section 9 or in relation to any other matters, shall, by order in writing either grant the permission, subject

to such conditions, if any, as may be specified in the order or refuse to grant such permission :

Provided that before making an order refusing such permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused :

Provided further that the [Vice-Chairman] may before passing any order of such application give an opportunity to the applicant to make any correction therein or to supply any further particulars of documents or to make good any deficiency in the requisite fee with a view to bringing it in conformity with the relevant rules or regulations :

[Provided also that before granting permission, referred to in Section 14, the Vice-chairman may get the fees and the charges levied, under sub-section (2-A) deposited;] ...."

Section 33 of the Act, 1973 provides for development activities to be carried on by the development authority on behalf of the owner and in the event of his default to levy cess in certain cases.

Section 34 of the Act, 1973 permits the development authority to transfer the developed areas with or without amenities to the local bodies on the conditions to be settled by the Government.

Section 35 of the Act, 1973 provides for levy of betterment charges and reads as follows:-

"35. Power of Authority to levy betterment charges.-

(1) Where in the opinion of the Authority, as a consequence of any development scheme having been executed by the Authority in any development area, the value of any property in that area which has been benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development:

Provided that no betterment charge shall be levied in respect lands owned by Government:

Provided further that where any land belonging to Government has been granted by way of lease or licence by Government to any person, then that land and any building situate thereon shall be subject to a betterment charge under this section.

(2) Such betterment charge shall be an amount-

(i) in respect of any property situate in the township or colony if any developed or in other area developed or redeveloped, equal to one third of the amount, and

(ii) in respect of property situated outside such township, colony or other area, as aforesaid, not exceeding one-third of the amount, by which the value of the property on the execution of the development scheme, estimated as if the property were clear of buildings exceeds the value of the property prior to such execution, estimated in like manner."

Section 36 of the Act, 1973 provides for assessment of the betterment charges by the development authority after opportunity to the person concerned.

Section 38-A of the Act, 1973 confers a power upon the authority to levy the land use conversion charges and the city development charges which reads as follows:-

"38-A. Power of Authority to levy land use conversion charge and city development charge:-(1) Where in any development area, the land use of a particular land is changed as a result of amendment of Master Plan or Zonal Development Plan under Section 13, the Authority shall be entitled to levy land use conversion charge on the owner of such land and in such manner and at such rates as may be prescribed:

Provided that the land use conversion charge shall be recovered from the owner of land by the Authority prior to final notification under sub-section (4) of Section 3 of this Act:

Provided further that where the land use of a particular land is changed as a result of coming into operation of Master Plan or Zonal Development Plan, no land use conversion charge shall be levied upon the owner of such land.

(2) Where in any development area a license has been granted to private developer for assembly and development of land, the Authority shall be entitled to levy city development charge on the private developer of such land and in such manner and at such rates as may be prescribed."

Section 39-A of the Act, 1973 provides for toll for amenities and Section 39-C of the Act, 1973 provides for levy of licence fee on the licence to be granted to the private developers.

Section 41 of the Act, 1973 confers a power upon the State Government to issue directions to the authority and the Chairman and Vice-Chairman for efficient administration of the Act as well as to exercise of its powers and discharge of its functions by the authority.

Section 55 of Act, 1973 confers a power upon the State Government to make rules for carrying out the purposes of the Act by notification in the official gazette and Section 55 (3) mandates that the rules so framed shall be laid before each House of the State Legislature within the period specified therein.

Section 55 of the Act, 1973 reads as follows:-

"55. Power to make rules.- (1) The State Government may, by notification in the

Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the force going power, such rules may provide for all or any of the following matters, namely-

(a) the levy of fee on a memorandum of appeal under Sub-section (5) of Section 15 or under Sub-section (2) of Section 27)

(b) the procedure to be followed by the [Chairman] in the determination of betterment charge, and the powers that it shall have for that purpose;

(c) any other matter which has to be, or may be, prescribed by rules.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature, while it is in session, for a total period of not less than thirty days, extending in its one session, or more than one successive session, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette, subject to such modifications or annulment as the two Houses of the Legislature may, during the said period, agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

7. Section 56 of the Act, 1973 confers the power to make regulations with the approval of the State Government upon the authority and Section 57 of the Act, 1973 provides for framing of the bye-laws by the authority for the purpose of carrying out the provisions of the Act with the approval of the State Government.

8. From the simple reading of the aforesaid statutory provisions it is apparently clear that the basic purpose for constituting a development authority and for declaring any area to be a development area under the Act, 1973, is to ensure that the development in the area takes place according to the plan, and not otherwise. The purpose is to have a planned development. The object of the development authority, as provided for under Section 7, is to hold and manage the land to carry on the Engineering and other managing activities and further to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide other services and amenities and to do everything which is necessary or expedient for the purposes of such development and for purposes incidental thereto.

9. It is therefore clear that the purpose of the development authority is not only to sanction maps in the matter of raising of constructions but also to ensure that necessary works are carried out in the development area in connection with supply of water, electricity, disposal of sewage, and maintenance of other services and amenities which would include amenities like provisions for school, medical help, open areas parks which are all essential for a pollution free environment for the residents of the development area and for basic amenities of life being made available to them.

10. In the aforesaid background Section 8 contemplates preparation of a master plan for the development area. Sub-section (2) specifically provides that each development area has to be divided into zones for the purposes of development and to the manner in which the land in each zone is proposed to be used and the stages by which such development shall be carried out. It is to serve as the basic pattern of framework within which the zonal development plan of various zones may be prepared.

From Section 8 itself it is clear that the master plan is to be framed as a platform for the purposes of carrying out the development work in the various zones and for preparation of the zonal development plans. The stages in which such development is to be carried out is also to be necessarily indicated in the master plan in order to ensure that the development as provided for is done in accordance with the basic pattern as disclosed in the master plan.

11. Section 9 contemplates preparation of the zonal development plans. These zonal development plans have to be prepared simultaneously with the preparation of the master plan or as soon as may be possible, subsequent to the preparation of the master plan. These zonal plans have to provide for a site plan and use-plan for the development of the zone. It has to depict approximate locations and extents of land use proposed in the zone for such things as public buildings, public works and utilities, roads, sewage, drains, business areas, markets, schools, hospitals, public and private open spaces and other categories of public and private uses.

12. The standards of population and building density are also to be depicted in the zonal plans. Clause (d) provides for the matters which must necessarily be provided for in a zonal plan and these have been stated in sub clauses (i) to (xii) which have already been quoted above.

13. The aforementioned provisions clearly provide that for carry on development, an incumbent is required to submit an application for sanction of plan/ map and the same should be accompanied with all particulars in respect of development as prescribed in the bye-laws and also by the Rules. Sub-section 2-A of Section 15 of the Act of 1973 provides that development authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner at such rate as may be prescribed. The provisions contained under Section 38-A of the Act of 1973 gives ample power to the development authority to levy land use conversion charge and city development charge in such manner and at such rate as may be prescribed.

14. This is admitted situation that prior to 17th November, 2014 no rules were framed by the State Government as per the provisions contained under Section 55 of the Act of 1973 for the purpose of levying development fee or city development charge. The State Government in exercise of powers under Clause (c) of sub-section (2) of Section 55 read with sub-section 2-A of Section 15 of the Act of 1973 had gazetted notification on 17th November, 2014 and framed

the Rules known as "Uttar Pradesh Urban Planning and Development (Assessment, Levy and Collection of Development Fee) Rules, 2014 (in short "the Development Fee Rules of 2014") and simultaneously the State Government has framed another rule in exercise of power under Clause (c) of sub-section (2) of Section 55 read with sub-section (2) of Section 38A of the Act of 1973 and gazetted the Rules on 17th November, 2014 known as "Uttar Pradesh Urban Planning and Development (Assessment, Levy and Collection of City Development Charge) Rules, 2014 (in short "City Development Charge Rules of 2014"). It is sought to be contended that from perusal of the Development Fee Rules of 2014 there is no provision for payment of internal development charge, sub-division charge and FAR charge, if the FAR charge is within the permissible limit for getting the building permit and it is also sought to be contended that so far payment of city development charge is concerned, the same is payable by licensed private developers as the Rules itself are applicable to such development areas, where license has been granted to a private developer for assembling and development of land under Section 39B of the Act. The city development charge is not applicable in the matter as the present matter relates to group housing.

It is further urged that in case of building permit for group housing on a compact parcel of the land, all the internal development is to be carried out by the developer, whereas all the necessary infrastructure such as park, parking, drainage, rain harvesting, management of wastage etc. are to be provided by a builder under the group housing and there is no subdivision of the plot after the development of land and as such the subdivision or internal development charge cannot be realised at the time of according permission.

15. For appreciating the controversy in hand, the relevant description of property in question of all the petitioners are given as follows:-

"The petitioner no.1 has applied for building permit for construction of group housing on plot no.M 26/1, M157/1 and M/157 situated at Mauja-Madauli, Pargana-Dehat Amanat, Ward-Dashaswamedh, Varanasi. The petitioner no.2 Anil Kumar Singh has applied for building permit on plot no.M148 and M149 situated at Mauja-Bharlai, Pargana-Shivpur, District-Varanasi and the petitioner no.3 Sangini Commerse Private Ltd. on plot no.393/1, 397/1, 403/2, 404, 405/1 situated at Mauja-Baraipur, Pargana-Shivpur, Ward-Sarnath, District-Varanasi."

16. It is claimed that all the three building permits of the petitioners are for construction of the group housing in new/undeveloped area, where VDA at no point of time had carried out any development activities and as such all the three petitioners, who are inclined to develop the group housing in new/undeveloped area, the permissible FAR is 2.5 times of total area of land in question and consequently all the petitioners as per building bye-laws had applied under the permissible FAR limit i.e. 2.5 times and permissible dwelling units and at no point of time any of the petitioners had moved any application for purchasable FAR or more than permissible purchasable dwelling units. It is sought to be contended that once the petitioners are inclined to develop group housing in new/

undeveloped area, where as per building bye-laws the permissible FAR is 2.5 times of the total area of land and once the petitioners had not moved any application for allowing any permission for purchasable FAR or for permission for additional dwelling units, then on this head the demand in question is arbitrary and per se bad.

17. As per record, this much is also reflected that on the application so moved by the petitioners under Section 15 of the Act, 1973 the VDA had initially processed the same and found their applications to be ''technically OK'' at the initial stage as per the building Buy-laws of 2008 and before issuance of building permits and sanction of map, the Asstt. Engineer, VDA had issued demand notice to all the petitioners on 10.7.2015, 28.2.2015 and 6.5.2015 respectively and as such through such notices the VDA had asked staking charge, supervision fee and development fee as well as replant fee. The said charges had not been objected by petitioner no.1 but so far as demand in respect of internal development charge, subdivision charge and city development charge (named as purchasable FAR), the petitioner no.1 has objected on the ground that the same cannot be realised for group housing. Similarly, petitioner nos.2 and 3 had also objected against the subdivision charge, internal development charge and purchasable FAR.

18. It is relevant to indicate that earlier the dispute of the development fee and other charges came up for consideration before the Division Bench of this Court in Rekha Rani v. State of U.P. & Ors., 2014 (1) ADJ 325 and the Division Bench vide order dated 12th December, 2013 had allowed the writ petition setting aside demand of all the charges with following observations:-

"Having arrived at the aforesaid conclusion, we allow these writ petitions with following directions:

(a) We hold that the development fee both external and internal as well as city development charges/impact fee cannot be levied or collected by the Development Authorities, so long as statutory rules in exercise of powers under Section 15 (2-A)/38-A of Act, 1973 are not framed.

(b) We direct that henceforth the Development Authorities shall not levy or collect any development fee both external and internal as well as city development charges/impact fee until statutory rules as required are framed.

(c) We also hold that the demand of sub-division charges, compounding fee for sub-division, as wholly illegal and the Building Bye-Laws framed in that regard need not be given effect to. The Development Authorities must insist for open space being left in accordance with the Building Bye-Laws instead of charging money for violation thereof.

(d) Demand of permit fee, supervision fee, inspection fee, park fee, impact fee, labour cess is held to be illegal, as not contemplated by any of the provision of Act, 1973.

(e) Petitioners, who have deposited the money under the aforesaid heads, (a), (c) and (d) under protest or under interim orders passed in these petitions, shall be entitled for refund of the same on an application being made before the Development Authority concerned within one month of the making of the application.

(f) All money collected by the Development Authorities from other persons under the aforesaid heads shall be transferred to the relevant account and shall be utilised for the purposes, mentioned under Act, 1973.

(g) The demand of Bank Guarantee in advance towards the cost of land and construction of houses for E.W.S. and persons belonging to lower income group, as also for installation of rain water harvesting system is also quashed subject to conditions mentioned in the body of the judgment.

These writ petitions are, accordingly, allowed. No order as to costs."

19. The matter was again considered by another Division Bench of this Court in Nisha Kumari v. State of U.P. & Ors. reported in 2014 (6) ADJ 20 in which Division Bench had approved the development fee but at the same time disapproved the subdivision charges and many other charges. The relevant portion of the judgment is extracted below:-

"In view of the foregoing discussions, we dispose of all the writ petitions with the following directions:

(i) The impugned demand notices issued by the various Development Authorities are quashed insofar as they demand sub-division charge/open area penalty, inspection charge, supervision charge, impact fee, Bandha charge, Triveni Mahotsav charge.

(ii) The Development Authorities shall issue a fresh modified demand charge notice to the petitioners. Any amount already deposited by the petitioners shall be adjusted towards modified demand notices. In case any excess charge has been deposited by the petitioners, the same may be refunded to the petitioners.

(iii) The Government Orders dated 22.1.1998, 25.10.2000 and 9.7.2001, issued by the State Government are quashed.

(iv) The sub-division charges can be levied only when a development/ construction is carried out by a person in violation of the bye-laws, Zonal Development Plan.

(v) The charge of development fee by the Development Authorities is upheld.

(vi) Parties shall bear their own costs."

20. Shri H.N. Singh, learned Senior Counsel submitted that both the aforesaid orders had been assailed by the development authority before the Apex Court and the matter is pending consideration there. Keeping in mind the aforesaid judgments the State Government has proceeded to frame aforementioned Rules

in exercise of powers conferred under Section 55 of the Act of 1973 taking care of development charge, city development charge and internal development charge. The Rule also talks about the purchasable FAR and purchasable dwelling unit. It is sought to be contended that as per existing Rules, the city development charge, internal development charge and sub-division charge are not payable in case of building permit for group housing but so far as purchasable FAR and purchasable dwelling unit are concerned, the same are payable in case the FAR and the dwelling units are beyond the permissible limit and as such the development authority can raise a demand, if the FAR and dwelling units are beyond the permissible limits. As such entire demand through impugned demand notices cannot sustain in the eyes of law and are liable to be quashed.

21. Shri Ashish Mohan Srivastava, has vehemently opposed the writ petition and in support of his submissions he has placed reliance on the averments contained in the counter affidavit and the supplementary affidavit. He further made submission that once the VDA had extended moreover all the benefits to the petitioner, then at present they are liable to deposit the amount in question as per the demand, which has been so calculated and appended along with the supplementary counter affidavit. Regarding the objection raised by the petitioners regarding the Floor Area Ratio Charge, the same has been levied as per Government Order dated 4.8.2011. In the case of petitioners'' project, the Uttar Pradesh urban Planning and Development (Assessment, Levy and Collection of City Development Charge) Rules, 2014 is not applicable as their project is a group housing project and group housing projects are not governed by these rules.

22. In this backdrop, once certain discrepancy were apparent in the impugned demand notices, we have asked to the counsel for VDA to submit correct calculation towards demand and consequently supplementary counter affidavit had been filed by one Shri Gopal Krishna, Executive Engineer, VDA. Along with the said affidavit, fresh calculation chart is appended, wherein comparative calculation before and after issuance of Government Order dated 13.5.2016 has been mentioned. For ready reference the same is reproduced as under:-

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22]59]501-00

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uksV%& dkye&9 o 11 esa vkxf.kr ''kqYd Mh0,e0 lfdZy jsV ij vk/kkfjr gSA iwoZ esa ;g ewY;kadu o"kZ 2014&15 ds vk/kkj ij vkxf.kr gSA dze la[;k&1 esa vuqeU; ,Q0,0vkj0 1-75 rFkk dz0la0&2 o 3 esa vuqeU; ,Q0,0vkj0 2-50 gSA

23. The aforesaid chart clearly reveals to the extent that under the Column 6, 8 and 10 no demand is being made except item no.9, which talks about the purchasable FAR. No resentment has been made by Shri H.N. Singh, Sr. Advocate regarding other charges except Item No.9, which talks about the FAR. He submitted that in the present matter the plan is to be sanctioned in new/ undeveloped area and as per the building bye-laws and Rules of 2014 the demand can only be raised in case purchasable FAR, which means additional FAR (over and above permissible FAR), which may be purchased by an application on payment of specific charges in accordance with the provisions of building bye-laws of the authority. Once area is new and undeveloped, where permissible FAR is 2.5 and once the petitioners are before this Court with categorical averment that at no point of time they were inclined to raise the permissible FAR limits or to add additional dwelling units, then no demand can be asked for and as such the same is arbitrary and this Court should come for rescue and reprieve of the petitioners.

24. Once this is factual situation that through supplementary counter affidavit VDA has taken a categorical stand that at present no charges are to be taken towards subdivision charges, internal development, then at this stage we are not inclined to adjudicate whether in the light of the aforementioned "the Development Fee Rules of 2014" and "City Development Charge Rules of 2014", any demand can be raised by the development authority or not.

25. At present the grievance is confined to only the FAR and as such we proceed to examine the record in question. We have also occasion to look into the relevant building bye-laws and relevant Rules pertaining to FAR. The record in question reflects that the State Government had framed a policy to increase Floor Area Ratio (FAR) in the growing urban areas so as to reduce the increasing pressure of urbanisation on agricultural land. Since higher FAR would lead to higher densities with consequential pressure on existing infrastructure, it is obligatory for the Development Authorities to strengthen/ augment the infrastructure commensurate with demand but at the same time it is also relevant to indicate that for augmenting infrastructure and strengthening the resources of all the developmental authorities, the State Government taken a policy decision that FAR in excess of permissible FAR, which is provided in the master plan/ zonal development plan/building bye-laws, has been made purchasable. The said policy had been framed keeping in mind the population density and in this backdrop the State Government had issued Government Order dated 9th March, 1999 for the said purpose and the same is extracted below:-

"Determination of Purchasable FAR

Government of Uttar Pradesh

Avas Anubhag-3

No. 1157/9-Aa-3-1999-2Aa.Ni/89

Lucknow : Dated 9 March, 1999

Notification since continuous growth of population is resulting in growing urbanisation of land and horizontal expansion of cities is leading to depletion of agricultural land day by day, therefore, in order to conserve agricultural land and ensure optimum utilisation of urban land it is imperative to increase the limit of permissible construction/FAR. However, increase in FAR would lead to higher densities with consequential pressure on infrastructure. Therefore, to raise financial resources for strengthening/augmenting infrastructure, by permitting additional FAR and realising in lieu of that proportionate cost of land as fee, the permissible FAR provided in the Master Plan/Zonal Development Plan/Building Bye-Laws/GOs, needs to be re-determined on purchasable basis for the towns given in the following list. And since through public notice dated 27th and 28th September,1998 read with Govt. Order No. 2946/9-AA-3-1998 Dated 17 September, 1998, objections and suggestions from the public were invited and subsequently after considering all the objections and suggestions received, by a committee, constituted by the Govt. for the purpose, the provisions were finalised.Therefore, in exercise of the powers conferred by Section-13, sub Section(3) of U.P. Urban Planning and Development Act, 1973, as required, by publishing Notification No. 2946(1)/9-AA-3-1998 Dated 17.9.1998 and subsequently under Section-13, Sub Section(4), the Governor is pleased to issue following directions to make necessary provisions for additional purchasable FAR over and above permissible FAR in the Master Plans/Zonal Development Plans and Building Bye-Laws of the enlisted towns to the following extent:-i. Purchasable FAR shall be permissible for commercial, community/social and infrastructure facilities, (viz., medical facilities, educational institutions etc.), residential and other land uses over and above the basic FAR provided in the Master Plan/Zonal Development Plan/Building Bye-Laws to the extent of 20% in the built-up areas (as defined in the Master Plan) and 33% in the developing/ undeveloped areas of a city.ii. The provision of purchasable FAR shall not be applicable to unitary residential buildings and industrial land use. iii. In case of Group Housing, proportionate additional dwelling units shall be permissible on purchasable FAR. iv. Built-up Area and Developing/Undeveloped Areas shall be defined in the following manner:-

"Built-up Area" means an area defined as such in the Master Plan. Where Master Plan has not been prepared or "built-up area" is not defined, the Development Authority Board shall immediately make necessary arrangement in this regard. For this purpose an area, within a development area, of which the greater part has been developed as commercial, industrial or residential area and which has been provided with all essential facilities like roads, water supply, sewerage, electricity etc., shall be defined as the built-up-area.

"Developing/Undeveloped Area" means an area outside the built-up-area, but within the limits of Development Area.

The extent of purchasable FAR in areas of cultural, historical and architectural importance and civil aviation zones which are to be delineated by the Development Authority Board or have been delineated in the Master Plan, shall be governed by the Master Plan regulations or other restrictions already enforced in this regard.vi. Purchasable FAR is purely an enabling provision; it can not be availed by any person as a matter of right. Keeping in view the traffic congestion, accessibility and level of infrastructure facilities, distance from the protected monuments/ heritage areas of a particular site or other planning considerations the Development Authority would identify from time to time such areas where purchasable FAR shall not be permissible. vii. The fee for purchasable FAR shall be calculated on the basis of current land price/rate according to the formula prescribed in Annexure-1.viii. The application for purchasable FAR shall be submitted along with application for building permit and the fee would be realised prior to plan approval.ix. 90% of the funds received from the sale of FAR shall be accredited to "Infrastructure Account" of the Development Authority. List of Development Areas where Master Plans are enforced -

1. Kanpur

9. Gorakhpur

17. Haridwar-Rishkesh

2. Lucknow

10. Aligarh

18. Faizabad

3. Varanasi

11. Moradabad

19. Bulandshahar-Khurja

4. Agra

12. Saharanpur

20. Raibareli

5. Allahabad

13. Jhansi

21. Unnao-huklaganj

6. Meerut

14. Dehradoon

22. Banda

7. Bareilly

5. Mathura- Virndavan

23. Muzzaffarnagar

8. Ghaziabad

16.Firozabad- Shikohabad

24. Hapur-Pilkhuwa

sd/- Atul Kumar Gupta

Secretary"

For ready reference, the relevant provisions of the Bye-laws of 2008 are quoted as below:-

"1-2-9- ry {ks=Qy vuqikr (,Q0,0vkj0) dk rkRi;Z fdlh Hkw[k.M ds dqy {ks=Qy ls Hkou ds dqy ry {ks=Qy dks foHkkftr djus ls izkIr HkkxQy ls gSA

1.2.15.(X) xzqi gkmflax" ds vUrxZr lewg ;k cageaftys Hkou] ftlesa izR;sd ry ij ,d ls vf/kd Lora= vkoklh; bdkbZ;ka gksa rFkk ftuesa Hkwfe ,oa lsokvksa [kqys LFky o vkokxeu ds jkLrs dh Hkkxhnkjh ,oa lg&LokfeRo gks] lfEefyr gksaxsA

1-2-31 fufeZr {ks= ls rkRi;Z ,sls ?kuRo vkcknh {ks= ls gS ftldk vf/kdka''k Hkkx O;olkf;d] vkS|ksfxd ;k fuokl {ks= ds :i esa fodflr gS rFkk vko'';d lqfo/kkvksa ls ;qDr gS ,oa egk;kstukUrxZr fufeZr {ks= ds :i esa ifjHkkf"kr fd;k x;k gS vFkok izkf/kdj.k cksMZ }kjk bl :i esa lhekafdr fd;k x;k gSA fufeZr {ks= ds vUrxZr fu;ksftr :i ls fodflr dkWyksuh@{ks= ''kkfey ugha gksxkA

1-2-32 fodflr {ks= dk rkRi;Z ,sls {ks= ls gs tgka vkUrfjd ,oa ckg~; fodkl ls lEcfU/kr voLFkkiuk lqfo/kk,a ;Fk&lM+dsa tykiwfrZ] M~sust] ty&ey fudkl] fo|qrZ&vkiwfrZ rFkk ikdZ ,oa [kqys {ks=] vkfn miyC/k gSaA

1-2-33 u,@vfodflr {ks= dk rkRi;Z ,sls {ks= ls gS tgka izkf/kdj.k }kjk fu/kkZfjr dV&vkWQ&MsV dks fdlh Hkh ,tsUlh@laLFkk@fodkldrkZ }kjk izLrkfor ;kstukUrxZr 10 izfr''kr ls vf/kd fodkl@fuekZ.k dk;Z u gqvk gksA mDr ekin.M ds vk/kkj ij izkf/kdj.k }kjk u,@vfodflr {ks=ksa dks fpUghd`r djrs gq, ?kksf"kr fd;k tk;sxkA

While processing the building plan, the population density is also to be looked upon. Relevant Clause 2.4.2 (II) is extracted below:-

"2.4.2 (II) xzqi gkmflax ds fy, u,@ vfodflr {ks= esa vf/kdre 1000 O;fDr izfr gsDVs;j 200 bdkba;k izfr gsDVs;j 200 bdkb;ka izfr gsDVs;j ?kuRo vuqeU; gksxkA fufeZr ,oa fodflr {ks= esa tksuy Iyku@ys&vkmV Iyku vuqeksfnr gksus dh n''kk esa vuqeksfnr tksuy@ys&vkmV Iyku ds vuqlkj ?kuRo vuqeU; gksxk vU;Fkk vf/kdre ?kuRo 150 bZdkbZ izfr gsDVs;j vuqeU; gksxkA

Some other relevant clauses of the Bye-laws of 2008 are quoted as under:-

3-3-6 Hkw&vPNknu] ,Q0,0vkj0 ,oa ?kuRo

(I) xzqi gkmflax Hkouksa esa lSV&cSd] Hkw&vPNknu] ry {ks=Qy vuqikr ,oa ?kuRo fuEuor~ gksxk%&

d & 12-5 ehVj rd mWapkbZ ds Hkouksa es pkjksa vksj U;wure 5-0 ehVj lSV&cSd gksaxsA

[k & 12-5 ehVj ls vf/kd mWapkbZ ds Hkouksa esa izLrj 3-4-5 ij nh xbZ rkfydk ds vuqlkj lSV&cSdA

(II) vf/kdre Hkw&vkPNknu 35 izfr''kr vuqeU; gksxkA

(III) u,@vfodflr {ks=ksa esa vf/kdre ,Q0,0vkj0 2-5 vuqeU; gksxk] rFkk fufeZr {ks= ,oa iwoZ fodflr ;kstukvksa@vkoafVr Hkw[k.Mksa esa vf/kdre ,Q0,0vkj0 1-5 vuqeU; gksxkA

(IV) fu;ksftr :i ls fodflr dkWyksfu;ksa@{ks=ksa] ftuds ys&vkmV IykUl l{ke Lrj ls vuqeksfnr gSa] eSa Hkw[k.Mh; fodkl dh i)fr ij ,d ls vf/kd Hkw[k.Mksa dks feykdj izLrkfor xzqi gkmflax vFkok vU; cgqeaftyk fuekZ.k vuqeU; ugha gksxkA

(V) fu;eksa ds vUrxZr dz;&;ksx ,Q0,0vkj0 vuqeU; gksxkA

(VI) u,@vfodflr {ks=ksa esa vf/kdre 1000 O;fDr izfr gsDVs;j (200 bdkbZ;kWa izfr gsDV;j) ?kuRo vuqeU; gksxk tcfd fufeZr ,oa fodflr {ks=ksa esa tksuy Iyku&ys&vkmV Iyku vuqeksfnr gksus dh n''kk esa rn~uqlkj ?kuRo vuqeU; gksxk vU;Fkk vf/kdre 150 bdkbZ izfr gsDVs;j rd ?kuRo vuqeU; gksxkA

(VII) nqcZy vk;k oxZ ds O;fDr;ksa gsrq fof''k"V ;kstukvksa esa vf/kdre 150 bdkbZ izfr gsDVs;j rd ?kuRo vuqeU; gksxkA

(VIII) lkeqnkf;d lqfo/kkvksa dk izkfo/kkj bl mifof/k ds izLrj&2-4-1 esa fu/kkZfjr ekudksa ds vuqlkj fd;k tk;sxkA lqfo/kktud nqdkuksa dk izkfo/kku izfr 1000 O;fDr;ksa ij 5 nqdkuksa ds vk/kkj ij fd;k tk,xk] tks vuqeU; vkPNkfnr {ks=Qy ds vUrxZr gh gksxkA izfr nqdku dk vf/kdre ry {ks=Qy 15 oxZ ehVj gksxkA

(IX) izos''k }kj ij 1-6 oxZehVj eki dk pkSdhnkj@xkMZ :i ftldh U;wure pkSM+kbZ vFkok O;kl 1-2 ehVj gksxhA vuqeU; gksxk] ijUrq fdlh Hkh n''kk es avfXu''keu gsrq okafNr U;wure lSV&cSd esa fuekZ.k vuqeU; ugha gksxhA

(X) xzqi gkmflax ;kstukvksa ds fy, ^usV* Hkwfe ;kstuk ds dqy {ks=Qy esa ls 18 ehVj ,oa vf/kd pkSM+h lM+dsa] ikdZ ,oa [kqys {ks= rFkk lkeqnkf;d lqfo/kkvksa ds {ks=Qy dks ?kVkrs gq, vo''ks"k Hkwfe ij ,Q0,0vkj0 ns; gksxkA

(XI) fodkl izkf/kdj.k@vkokl ,oa fodkl ifj"kn }kjk ^cYd* lsy ds :i esa xzqi gkmflax gsrq vkoafVr dh tkus okyh Hkwfe ds lEiw.kZ {ks=Qy ij 25 ,Q0,0vkj0 bl izfrcU/k ds v/khu vuqeU; gksxk fd ;kstukUrxZr vU; mi;ksxksa rFkk&O;kolkf;d dk;kZy;] vkS|ksfxd] laLFkkxr ,oa lkeqnkf;d lqfo/kkvksa ds fuekZ.k ds fy, ,Q0,0vkj0 ml mi;ksx gsrq fu/kkZfjr ,Q0,0vkj0 dh lhek ds vUrxZr jgsxkA

3-5-2-2 dz;&;ksX; ,Q0,0vkj0 ds vuqeU;rk gsrq fuEu vis{kk,a iw.kZ gksuk vfuok;Z gSa%&

d & Hkou dh mWapkbZ ds vuqlkj lSV&cSd dk izkfo/kku Hkou fuekZ.k ,oa fodkl mifof/k esa fu/kkZfjr ekudksa ds vuqlkj djuk gksxkA

[k & dz; ;ksX; ,Q0,0vkj0 ds lkis{k vfrfjDr bdkbZ;ka vf/kdre fu/kkZfjr ?kuRo dh lhek ds vUrxZr gh vuqeU; gksxhaA

x & Hkou esa LV~Dpjy lsQ~Vh lEcU/kh izkfo/kku Hkou fuekZ.k ,oa fodkl mifof/k esa fufgr vkis{kkvksa ds vuqlkj fd, tkus gksaxsA

?k & izLrkfor Hkou gsrq LFkkuh; eq[; ''keu vf/kdkjh ls vfXu''keu lqj{kk lEcU/kh vukifRr izek.k&i= izkIr dj izkf/kdj.k dks izLrqrj djuk gksxkA

p & Hkou esa izLrkfor dqy ry {ks=Qy ,Q0,0vkj0 dz; mijkUr ds fy, Hkou mifof/k esa fu/kkZfjr ekudksa ds vuqlkj ikfdZax O;oLFkk djuh gksxhA

3-5-2-3 ^fufeZr* ^fodflr {ks=* rFkk u,@vfodflr {ks= esa dz;&;ksX; ,Q0,0vkj0 dh vuqefr ''kklu }kjk xfBr lfefr dh laLrqfr ds vk/kkj ij ns; gksxh] ftlesa yksd fuekZ.k foHkkx] ty fuxe] ftykf/kdkjh] eq[; uxj ,oa xzke fu;kstd] vfXu''keu foHkkx rFkk lEcfU/kr izkf/kdj.k@vkokl ,oa fodkl ifj"kn ds izfrfuf/k] tks U;wure v/kh{k.k vfHk;Urk Lrj ds gksa lnL; gksaxsA mDr lfefr ekufp=ksa ds ijh{k.k ,oa LFky fujh{k.kksijkUr izLrkfor Hkou ds lSV&cSd] LV~Dpjy lsQ~Vh] vfXu''keu lqj{kk] ikfdZax O;oLFkk rFkk voLFkkiuk lqfo/kkvksa ds ekudksa dh fu/kkZfjr psdfyLV ds vk/kkj ij viuh vk[;k@laLrqfr cksMZ dks izLrqr djsxh fd dz;&;ksX; ,Q0,0vkj0 ds lkis{k mDr vis{kk,a iw.kZ gks jgh gSa vFkok ugha vFkkZr dz;&;ksX; ,Q0,0vkj0 vuqeU; fd;k tk ldrk gS vFkok ughaA lfefr dh laLrqfr ds vk/kkj ij gh cksMZ }kjk dz;&;ksX; ,Q0,0vkj0 dh vuqeU;rk ds lEcU/k esa fu.kZ; fy;k tk;sxkA

3-5-2-4 dz;&;ksX; ,Q0,0vkj0 ''kqYd dh x.kuk fuEu i)fr ds vuqlkj dh tk,xh%&

? dz;&;ksX; ,Q0,0vkj0 ''kqYd = dz;&;ksX; ry {ks=Qy X Hkwfe dh orZeku nj X xq.kkad

? dz;&;ksX; ,Q0,0vkj0 ''kqYd dh x.kuk gsrq Hkw & mi;ksx ds vuqlkj xq.kkad fuEuor~ gksxk%&

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fVIi.kh%& Hkwfe dh orZeku nj dk rkRi;Z ftykf/kdkjh }kjk fu/kkZfjr Hkwfe ds orZeku lfdZy jsV ls gSA"

For ready reference, Rule 2 (1) (c) to (k) of the Development Fee Rules of 2014 is quoted as under:-

"2. (1) In these Rules, unless the context otherwise requires:-

......

(c) ''Building Permit; means authorisation to proceed with construction or re-construction of a specific building at a particular site in accordance with the building plan approved by the Authority;

(d) ''Built-up Area'' means the area within a development area as shown in the master plan or which has been delineated as such by the Authority;

(e) ''Developed Area'' means the area within a development area where all facilities like road, water supply, drainage, sewerage, electricity, solid waste disposal, parks and open spaces and community facilities etc. have been provided in accordance with an approved layout plan and has been delineated as such by the Authority;

(f) ''Development Permit'' means authorisation to proceed with development or re-development of a specific parcel of land in accordance with the lay-out plan approved by the Authority;

(g) ''Dwelling Unit'' means an independent housing unit with separate facilities for living, cooking and sanitary requirements;

(h) ''Floor Area Ratio'' (FAR) means the quotient obtained by dividing the total covered area (plinth area) on all floors by the area of the plot;

(i) ''Group Housing'' means group or multi-storied buildings having one or more independent dwelling units on each floor where land, open spaces, circulation area and common facilities are jointly owned;

(j) ''Purchasable FAR'' means additional FAR (over and above the permissible FAR) which may be purchased by an applicant on payment of specified charges in accordance with the provisions of the Building Bye-laws of the Authority;

(k) ''Purchasable Dwelling Units'' mean additional dwelling units (over and above the permissible dwelling units) which may be purchased by an applicant on payment of charges as specified in the Building Bye-laws of the Authority;

.............."

26. In the present matter we find that entire demand has been raised towards purchasable FAR on the basis of Government Order dated 4.8.2011 and the same has been charged as per sub-clause (3) of the notification dated 25.09.2008. In the counter affidavit specific stand has been taken by the VDA that towards the charge relating to FAR the same has been levied in pursuance of the Government Order dated 4.8.2011 appended as Annexure CA-2 to the counter affidavit. The said Government Order had been relied upon sub-clause (3) of Notification dated 25.09.2008 by which purchasable FAR had been sanctioned but at the same time it has also been averred that the charges so made at the rate of purchasable FAR, find place in Clause 3 (3) of the said notification. Once the plan in question is to be sanctioned in new/ undeveloped area, where as per building bye-laws and Rules of 2014 the permissible FAR is 2.5, then we are of the considered opinion that reliance on the Government Order dated 4.8.2011 is impermissible, until the statutory rules are framed. We also find that no doubt the purchasable FAR and purchasable dwelling units are also defined in the Development Fee Rules of 2014 but no rate of purchasable dwelling unit and purchasable FAR are provided. The petitioners have also come with categorical stand that they have never moved any application for excess construction of permissible dwelling units and FAR. As such we are of the considered opinion that the impugned demand qua the FAR cannot sustain and are accordingly set aside. The VDA is not entitled to demand towards FAR. But in case the petitioners exceed permissible limit of 2.5, then definitely as per the building bye-laws the same would be payable. So far as other demands are concerned, the same may be calculated as per the demand appended along with supplementary counter affidavit and quoted above. Accordingly fresh demand may be recalculated within six weeks.

27. The writ petition is allowed accordingly.

