

(2014) 05 AHC CK 0305

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Nos. 1883 of 1993, 12521, 13180, 43822 of 1998, 20500 of 1999, 21107 of 2000, 175, 619, 23815, 28877 of 2001, 5688, 6389, 52564 of 2002, 493, 3032, 4288, 6055, 6345, 7198, 9075, 11440, 13273, 14052, 14112, 14173, 14527, 15449, 17

Nisha Kumari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Airports Economic Regulatory Authority of India Act, 2008 — Section 13
Constitution of India, 1950 — Article 14, 141, 162, 20, 21
Uttar Pradesh General Clauses Act, 1904 — Section 4(33A), 4(33-A)
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 14, 14(1), 15, 15(1), 15(1)(2)

Citation : (2014) 6 ADJ 20 : (2015) 1 AWC 339 : (2014) 3 UPLBEC 2139

Hon'ble Judges : Ranjana Pandya, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : R.K. Sharma, Ravi Kent, Lakshmi Kant Mishra, Ankur Goel, Party-in-Person, P.C. Srivastava, Vivek Birla, Irshad Ali, B.D. Mandhyan, S. Mandhyan, A.C. Nigam, Haribans Singh, Rakesh Pandey, P.K. Singh, B.K. Tripathi, V.K. Shukla, Parmatma Rai, Rahul Chaturvedi, G.P. Singh, Umesh Chaturvedi, S.P. Saroj, Ved Mani Sharma, Shashi Nandan, M.M.D. Agrawal, Sanjeet Kumar Yadav, S.P. Singh Parmar, Rajendra Mishra, Kaushalendra Nath Singh, P.C. Shukla, B.P. Tripathi, Pradeep Upadhyay, Panaj Shukla and Sharique Ahmad, Advocate for the Appellant; Ajeet Kumar Singh, Amit Dubey, D.B. Paul, O.D. Malviya, P.K. Pandey, Q.H. Siddiqui, R.K. Pandey, Vivek Varma, N. Mishra, A.K. Misra, S.C., V.N. Srivastava, Ashok Jaiswal, Satish Chaturvadi, U.K. Uniyal, V.P. Awasthi, A.P. Srivastava, Abida Sayed, R.A., Ashok Mohiley, B.K. Ojha, R.M. Pandey and D.S. Chauhan, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ashok Bhushan, J.—By this bunch of writ petitions, the petitioners have challenged various fees imposed by the different development authorities constituted under the U.P. Urban Planning and Development Act, 1973

(hereinafter referred to as "1973 Act") in the State of U.P. On an application filed by the petitioners seeking permission for carrying out development in The land/building operations, memo of demand has been issued by the Development Authorities imposing different fees/charges subject to which application seeking permission for carrying out development was to be granted. Aggrieved by the various fees and charges raised by different Development Authorities, the petitioners have come up in this Court by means of these writ petitions. Earlier also different fees and charges imposed by the Development Authorities were challenged by means of writ petitions in this Court, which writ petitions have been decided by this Court from time to time, details of which shall be noted hereinafter. Writ petition No. 23281 of 2001 Sabia Khan and others v. Allahabad Development Authority and others, was filed in this Court questioning the legality/validity of water charges/Malba charges/development charges, subdivision charges and open area charges. The writ petition was allowed by this Court by its judgment and order dated 1.7.2003. Against the order dated 1.7.2003, Allahabad Development Authority and others filed SLP and the Apex Court vide its judgment and order dated 11.7.2006 in Civil Appeal No. 4351 of 2004 connected with other appeals, set aside the order of the High Court and matters were remitted to the High Court for consideration of the matter afresh. The judgment of the Apex Court is in Allahabad Development Authority and Another Vs. Sabia Khan and Another, Some of the writ petitions in this bunch of cases are the writ petitions which have come up for hearing consequent to the order of the Apex Court dated 11.7.2006. The writ petitions included in this bunch challenge the action of the Allahabad Development Authority, Agra Development Authority, Gorakhpur Development Authority, Moradabad Development Authority, Meerut Development Authority and Mathura Vrindavan Development Authority. The writ petitions relating to one Development Authority have been included in one group. For example in Group-A cases pertaining to Allahabad Development Authority have been included.

2. In writ petition No. 61669 of 2010, counter-affidavit, supplementary counter-affidavit have been filed by the Allahabad Development Authority. The Division Bench hearing the writ petition passed various orders directing the Allahabad Development Authority to give various details, in compliance of which affidavits have been filed. The State of U.P. has also filed detailed counter-affidavit in the writ petition. Rejoinder-affidavit has also been filed by the petitioners in the writ petition. The writ petition No. 61669 of 2010 is being treated as the leading writ petition. The facts of writ petition No. 61669 of 2010 Smt. Nisha Kumari v. State of U.P., are to be noted in detail. Facts of some other writ petitions in which learned Counsel appearing for the petitioners have pointed out some additional facts and raised certain additional arguments have also to be noted for appreciating all the issues which have arisen in this bunch of writ petitions. This bunch of writ petitions were earlier heard in the year 2011. Various orders have been passed directing the State Government and Development Authority to file affidavits. Adjournments were sought by the Allahabad Development Authority of

several occasions due to which the writ petitions could not be earlier decided. From 13.5.2014 in this bunch of writ petitions hearing began. On 14.5.2014, Sri A.P. Paul, learned Counsel appearing for the Allahabad Development Authority made a request for postponing the hearing of the bunch of writ petitions on the ground that a writ petition being writ petition No. 56485 of 2013 (and other connected writ petitions) Smt. Rekha Rani v. State of U.P., were allowed by a Division Bench of this Court on 12.12.2013 which writ petitions involved several common issues which are sought to be raised in these writ petitions and against the judgment of the Division Bench of this Court, Allahabad Development Authority filed SLP No. 7065 of 2014 in which the Apex Court vide its order dated 24.3.2014 has stayed the operation of the judgment, hence, hearing of this bunch of writ petitions be adjourned awaiting the decision of the Apex Court. We considered the aforesaid prayer made by Sri A.P. Paul and passed a detail order on 14.5.2014 declining the prayer of Sri A.P. Paul for postponing the hearing of the writ petitions and proceeded to hear the matters on merit. The matter was heard on 13.5.2014, 14.5.2014 and 15.5.2014.

Facts:

3. Facts giving rise to the leading writ petitions need to be noted first. Smt. Nisha Kumari, the petitioner purchased a plot measuring 213.14 square meters being plot No. 3/9, Auckland Road, Allahabad by registered sale-deed dated 19.11.2009. Plot No. 3/9 is a part of original Nazul plot No. 3 measuring 1 acre 655 square yards (5494 square yards) or 4594.36 square meters. The plot No. 3 was leased on 29.4.1932 in favour of one K.N. Mukherjee, Under various Government Orders issued from time to time an area of 218.14 square meters was converted as a freehold land on an application submitted by Sanjay Gupta, the vendor of the petitioner by lease deed dated 1.1.2005 which is known as plot No. 3/9. For different other areas free hold deeds were got executed out of Nazul Plot No. 3. The petitioner submitted an application for sanction of a building plan in accordance with Section 15 of the 1973 Act. A fee of Rs. 900/- was deposited by the petitioner on 5.7.2010. A demand note dated 24.7.2010 was issued by the Allahabad Development Authority communicating approval in principle of the sanctioned plan subject to fulfilling certain conditions which included deposit of the following fees:

4. The petitioner aggrieved by the said demand note filed the writ petition on 5.10.2010. A Division Bench vide order dated 4.5.2011 directed the writ petition to be listed alongwith writ petition No. 2617 of 2007 and other connected matters. This Court passed following interim order on 30.5.2011 in the writ petition.

"Heard Shri Ravi Kant, learned Senior Counsel for the petitioner and other counsels appearing for the petitioners, Shri A.K. Mishra and Shri Ajit Kumar Singh for the respondents.

Learned counsel for the petitioner submits that in this bunch of petitions interim

order has been passed in the several writ petitions staying the open area penalty.

In this writ petition the Sub Divisional Charges are being asked for. The hearing of this petition is continuing but could not be completed since summer vacation is commencing after tomorrow.

List this petition on 14.7.2011 for hearing.

Till the next date of listing, it is provided that subject to petitioner giving security of the Sub Divisional Charges/open area penalty other than cash or bank guarantee to the satisfaction of respondent No. 2 and deposits other charges, the respondent shall issue the necessary order which shall be subject to result of the writ petition."

5. The petitioner by the writ petition has also challenged the bye-laws dated 14.1.2010 (Annexure-1 to the writ petition) in so far as it relate to compounding provision Nos. 11 and 12 of Rule 4 of the Schedule to the bye-laws. Following are the reliefs which have been claimed in the writ petition:

"(a) issue a writ, order or direction in the nature of certiorari quashing the impugned compounding provisions No. 11 and 12 of Rule 4 of Schedule to the Bye-laws dated 4.1.2010 (Annexure-1) framed by the State Government being violative of Articles 14, 20 and 21 of the Constitution.

(b) issue a writ, order or direction in the nature of certiorari quashing the demand notice dated 24.7.2010 (Annexure-2) requiring the petitioner to pay Rs. 6,29,046/- by way of penalty/compounding fee and Rs. 1,05,955/- by way of external development charge raised by the respondent Authority.

(c) issue a writ, order or direction in the nature of mandamus restraining the respondents from realizing any amount in pursuance of the impugned demand notice dated 24.7.2010, and further the respondent authority be directed to sanction the building plan submitted by the petitioner without insisting here to pay the aforesaid two sums."

6. Apart from the leading writ petition in various other writ petitions relating to Allahabad Development Authority, the bye-laws dated 14.1.2010 have been challenged alongwith respective demand notes issued by the Development Authority. In some of the writ petitions only demand note issued by the Development Authority demanding different charges have been challenged. In writ petition No. 13283 of 2013, Sanjay Kumar Rai v. State of U.P. and others, the petitioner, who claims to have purchased an area of 1067.34 square meters by means of registered sale-deed dated 19.6.1987 submitted an application for sanction of building plan on which demand note dated 8.2.2013 was issued. The petitioners have challenged the inspection fee, development charge and sub-division charge.

7. In writ petition No. 31340 of 2012, Dr. Anjum Ahmad and another v. State of U.P., the petitioners have challenged the demand note dated 22.6.2012 insofar

as it imposes open area penalty to the tune of Rs. 11,56,676. The petitioner's case in the writ petition is that by sale-deed dated 11.6.2007, they purchased the portion of land measuring 240.7 square meters.

8. In Writ petition No. 34695 of 2009, Smt. Meera Singh v. State of U.P., the petitioner claims to have purchased an area of 188.58 square meters by sale-deed dated 16.4.2008. She submitted an application for sanction of the map. Zonal Officer, Allahabad Development Authority by demand note dated 6.7.2009 demanded an amount of Rs. 4,39,477 towards several charges including sub-division charge, external and internal development charge and open area penalty. It is submitted that sub-division charge cannot be imposed since it is the earlier owner, who had subdivided the plot and not the petitioner. It is further pleaded that no development has been carried out by the Allahabad Development Authority and the area is a well developed area hence, no development charge is required to be demanded.

9. Group-B writ petitions relate to Agra Development Authority. It is sufficient to note the facts of writ petition No. 32467 of 2003 relating to Agra Development Authority. The writ petition has been filed by Agra City Estate Development Organization, a registered society which by writ petition has challenged the Government Orders dated 22.1.1998, 25.10.2000 and 9.7.2001, issued by the State of U.P. by which the State Government has directed for realising inspection fee while granting permission u/s 15 of the 1973 Act. The Division Bench of this Court on 30.7.2013 passed an interim order restraining the respondent No. 2 from realising supervision/inspection fee while granting sanction of the building/lay out plan.

10. Group-C Writ petition relates to Gorakhpur Development Authority. The writ petition No. 44669 of 2011 has been filed against the Gorakhpur Development Authority. The petitioner claims to be owner of plot No. 566 which is an ancestral property plot No. 563 is claimed to have been partitioned between the co-sharers by memo of family partition in which northern portion belonged to the petitioner. The petitioner submitted a map for making construction of area of 5800 square feet on plot No. 563. A demand note dated 22.7.2011 was issued by the Gorakhpur Development Authority asking the petitioner to deposit development fee, sub divisional fee, standard development fee, stacking charges, inspection fee, impact fee, compounding fee total Rs. 16,79,791, In the writ petition an interim order was passed on 8.8.2011 directing that subject to the petitioner's giving security other than cash or bank guarantee of sub division charges and impact fee and deposit of other charges further action shall be taken regarding sanction of the map.

11. Group-D writ petition relate to Moradabad Development Authority being writ petition No. 6389 of 2002, Moradabad Educational Foundation v. State of U.P. and others. The petitioner submitted a map to the Moradabad Development Authority in pursuance of which a demand letter was issued to the petitioner and the petitioner deposited the entire amount indicated in the demand letter. A

notice dated 31.10.2001 was issued demanding an amount of Rs. 7,23,360/- as Bandha Shulk. The petitioner's case is that the authority is proposing to construct a barrage on the river of Ramganga for which the amount is also to be paid by the petitioner. The petitioner prayed for quashing the notice dated 31.10.2001. The Division Bench of this Court on 11.2.2002 passed a stay order staying the operation of the notice dated 31.10.2001.

12. Group-E writ petition relates to Meerut Development Authority being writ petition No. 1883 of 1998 Displaced Arya Cooperative Housing Society Ltd. v. State of U.P. The petitioner a registered cooperative society submitted an application for sanction of lay out plan for Arya Nagar Colony, Meerut which was approved by the prescribed authority. After sanction of the lay out plan, the petitioner claimed to have developed the colony. The petitioner submitted a map for construction of the marketing complex in the colony to the Moradabad Development Authority. By letter dated 27.2.1989, the petitioner was informed that unless the petitioner deposits Rs. 60/- per square meter as external development charge map cannot be sanctioned, A writ petition No. 5482 of 1989 was filed by the petitioner challenging the letter dated 27.2.1969. The writ petition was disposed of on 10.9.1997 giving liberty to the petitioner to represent the matter to the Vice Chairman, Moradabad Development Authority, who was directed to take decision after giving opportunity of hearing. For a period of two months the realisation of the amount in question was directed to be stayed. The petitioner filed a representation which has been rejected by order dated 12.12.1997 upholding the demand of Rs. 60/- per square meter as development charge. The petitioner filed the writ petition challenging the said demand. No interim order has been passed in the writ petition.

13. Group-F writ petition relates to Mathura Vrindavan Development Authority being writ petition No. 30630 of 2006, Smt. Veena Yadav v. State of U.P. The petitioner claimed to have purchased plot No. 163 on 15.4.2001 from Baldevpuri Construction Housing Society Ltd. An application was filed by the petitioner for sanction of the map of the house. On 14.6.2005, the petitioner was asked to deposit Rs. 1,33,395/- as sub-division charge. The petitioner filed a writ petition challenging the levy of sub-division charge. The Division Bench of this Court on 26.5.2006 granted an interim order.

14. In Writ petition No. 51404 of 2006 Smt. Manju Agrawal v. State of U.P., the petitioner after purchase of the plot by sale-deed submitted an application for sanction of the map. A demand note dated 10.5.2006 was issued demanding development charge, sub-division charge and some other charges amounting to Rs. 1,01,456/-.

15. We have heard Sri H.N. Singh, learned Senior Advocate, Sri R.K. Sharma, Sri Anoop Trivedi, Smt. Manju Rani Singh, Sri Arvind Srivastava, Sri Rahul Agarwal, Sri S.A. Ansari, Sri Neeraj Tripathi, Sri Vibhu Rai and other learned counsels for the petitioners. Sri Ajeet Kumar Singh, Sri A.P. Paul, Sri M.C. Chaturvedi and other learned counsels appeared for the different Development Authorities and

Sri Ravi Ranjan, learned Standing Counsel has been heard for the State.

16. Learned counsel for the petitioners in support of the writ petitions have raised various submissions. It is submitted that the development authority can levy only that fee or charges which have been authorized by the UP. Urban Planning and Development Act, 1973. It is submitted that Section 15(2-A) authorises only levy of development fees, mutation charges, stacking fees and water fees, hence no other fee can be realised apart from the aforesaid fees. It is further submitted that the development fees, mutation charges, stacking fees and water fees can also be levied only in the manner as may be prescribed. It is submitted that the word "as may be prescribed" used in Section 15(2-A) has to be interpreted as prescribed by Rules framed u/s 55 of the 1973 Act. It is submitted that no statutory rules has been framed by the State u/s 55 of the Act. The development authorities are not competent to charge any fee towards the development fee etc. It is further submitted that the development fee have been defined in Section 2(ggg) of the 1973 Act. It is submitted that said fee can be charged only when development authority carries on construction of road, drain, sewer line, electricity supply and water supply lines etc. It is submitted that the areas where demand notices have been issued by the development authority demanding development fee are already developed areas, hence development authorities are incompetent to charge development fee. It is further submitted that for charging any fee by the development authority the principle of "Quid Pro Quo" is applicable. Without carrying on the development by the development authority, it is not entitle to charge any fee. It is submitted that there is no authority of law for levying and demanding different fee. Reliance has been placed on Article 265 of the Constitution of India which prohibits the levy and collection of taxes without authority of law.

17. It is further submitted that u/s 41 of 1973 Act, the State Government cannot prescribe charging of any fee since Section 41 empowers the State Government only to issue directions for the efficient administration of this Act which power cannot be used for prescribing different fee by the State Government. It is submitted that inspection fee, supervision fee which has been imposed by different Government Orders issued from time to time is without authority of law. The State Government has no jurisdiction to authorise levy of any fee under 1973 Act in exercise of power u/s 41 of the Act.

18. Challenging the bye-laws dated 14.1.2010, learned counsel for the petitioners submitted that the bye-laws dated 14.1.2010 having not been framed by the development authorities, the said bye-laws cannot be said to be framed in accordance with 1973 Act. It is submitted that the bye-laws dated 14.1.2010 have been framed by the State Government whereas Section 55 obliges the development authorities to frame bye-laws with the previous approval of the State Government. Statute empower the bye-laws to be framed by development authorities with an object and purpose which power cannot be taken over by the State Government. It is submitted that under the bye-laws compounding fee is

being charged for example sub division charges. It is submitted that u/s 32 of the Act, compounding can only be made of an offence which is punishable by or under the 1973 Act. It is submitted that sub division is neither made punishable by the 1973 Act nor under any other Act, hence there is no occasion for charging any compounding fee. It is further submitted that the compounding fee is being charged on the allegation that the owner has sub divided the plot without permission of the development authority and has left no open area. It is required to leave open area under the zonal regulation or the bye-laws. It is submitted that no compounding of violation of a provision of keeping open area can be made and such compounding is arbitrary and illegal. It is submitted that leaving open area under zonal regulation or bye-laws has been included in the zonal regulation and bye-laws to protect the environment and ecology. The said provisions cannot be allowed to be violated by development authorities by taking money. It is submitted that compounding of such offence only increases the violation of the provisions of zonal regulation and bye-laws which mandates leaving of open area by an owner. It is further submitted that even if compounding fee is levied on sub-division of a plot development authority is to find out as to who has violated the provision and who is the person for sub dividing the plot. It has to identify such person. Without carrying on the development the development fee cannot be charged. The subsequent purchasers are not guilty of sub dividing the plot. Merely by submission of plan for sanction u/s 15, no offence can be said to have been committed on which any compounding charge can be imposed. It is submitted that any sub division of plots effected prior to enforcement of compounding bye-laws cannot be made an offence since the bye-laws have no retrospective operation. It is submitted that permission is required for carrying out the development within the meaning of Section 2(e) of 1973 Act. Merely execution of sale-deed or submission of a building plan is not a development within the meaning of Section 2(e), hence no fee or charge can be levied on account of sub division only on submission of a building plan. At best development authorities can charge the development fee only when any development is carried out on the plot. No zonal development plan has been prepared for developing area of different Development Authorities which itself indicates that development authorities are not interested in carrying on any development in the developed area. Open area penalty was not leviable, it having no statutory foundation.

19. Sri Ajeet Kumar Singh, learned counsel for the Allahabad Development Authority advanced argument on behalf of the development authorities, he submits that development fee having been authorised by Section 15(2-A) of 1973 Act can very well be levied and realised by development authority. He submits that the development fee having been authorised by Section 15(2-A) of the 1973 Act it is not necessary that the said fee can be charged only after framing of the Rules. He submits that under the orders issued by the State Government u/s 41, the various fees can be charged by the development authorities. It is submitted that under Article 162 of the Constitution of India, the

executive power of a State extent with respect to the area where the Legislature of the State has power to make laws. It is submitted that various developments have been carried out by Allahabad Development Authority, details of which have already been brought on record by means of supplementary-affidavit and supplementary counter-affidavit, Reference in this context has been made to the supplementary counter-affidavit sworn by Baij Nathj Joint Secretary, Allahabad Development Authority. He submits that under the orders issued by the State Government, Infrastructure fund has been created under which various percentage of fees realised for granting permission for carrying on development is deposited which is used for developing infrastructure. He submits that various developments have been carried out by Allahabad Development Authority, details have been brought on record in the above supplementary counter-affidavit. He submits that the submission of the petitioners that no development have been carried out by Allahabad Development Authority is wholly incorrect. He submits that the development charges and other charges to be realised by Allahabad Development Authority and other development authorities are not a tax.

20. It is further submitted by Sri Ajeet Kumar Singh that bye-laws have been framed by development authority with the approval of State Government, namely, building bye-laws wherein there is a requirement of obtaining sanction of layout plan. Under building bye-laws, certain percentage of the land has to be left as the open area. He submits that sub division of the (sic) has to be carried out as per permissible restriction and a person who is sub dividing the plot without obtaining permission commits an offence which can be compounded under the bye-laws framed by development authorities, namely, Allahabad Vikas Pradhikaran Apradho Ka Shaman Upvidhi, 2009. He submits that bye-laws dated 14.1.2010 were only model bye-laws circulated by the State Government which was adopted by Allahabad Development Authority vide its resolution dated 7th May, 2010, hence the bye-laws have been framed by the authority in accordance with Section 57 of the Act with prior approval of the State Government which bye-laws is wholly in consonance with the Act. The sub division carried out without approval is made punishable, for which offence, compounding is contemplated as prescribed in schedule. He submitted that levy of sub division charges on account of sub dividing the plots without approval has rightly been compounded and sub division charges have been levied. In so far as open area penalty is concerned, Sri Ajeet Kumar Singh submits that the Allahabad Development Authority itself has passed the resolution for withdrawing open area penalty which resolution has been passed on 16.1.2010 the same has already been brought on record alongwith counter-affidavit. It is submitted that the definition of word "Development" as contained in Section 2(e) shall include sub division of plot carried out by owner. He submits that when the plot is sub divided, the sub division itself is a development contemplated u/s 2(e), hence for sub division permission is required. It is submitted that for submitting a map for sanction u/s 15, there is requirement of submitting layout plan. It is submitted that a sub division of plot is material change within the meaning of Section 2(e)

of the Act. It is submitted that bye-laws can be framed till zonal development plan is not prepared. He submitted that for Allahabad city only one zonal development plan has been prepared.

21. Sri Ravi Ranjari, appearing for the State has adopted the submission advanced by Sri Ajeet Kumar Singh. He has relied and referred to the detailed counter-affidavit filed by State sworn by Sri Shambhu Nath, Deputy Secretary, Shakari Awas dated 19th May, 2011.

22. Learned counsel for the parties have also placed reliance on various judgments of the Apex Court and this Court which shall be referred to while considering their respective submission in detail.

23. From the pleadings of the parties and submissions advanced by learned counsel for the parties, following are the issues which arise for consideration in this Bunch of writ petitions:

(i) Whether for levying the development fee and other fees as provided for in Section 15(2-A) of 1973 Act, the rules are required to be framed by the State Government u/s 55 of the Act and without there being rules framed, no fee as mentioned in Section 15(2-A) can be levied?

(ii) Whether the Development Authorities can charge development fee under the direction issued under U.P. (Regulation of Building Operation) Act, 1953 as held by Apex Court in State of U.P. and Others Vs. Malti Kaul (Smt) and Another,

(iii) Whether for levying development fee, the development authorities have to carry out the development as contemplated u/s 2(ggg) of 1973 Act before hand.

(iv) Whether the sub-division of a plot of land is covered by definition of development as contained in Section 2(e) of 1973 Act?

(v) Whether sub division of a plot is an offence within the meaning of 1973 Act or rules or bye-laws framed under the Act.

(vi) Whether sub division charges can be levied by the development authority on the ground that no lay out plan has been got approved by the owner hence the same amounts to an offence within the meaning of Section 32 of 1973 Act?

(vii) Whether as per compounding bye-laws dated 14.1.2010 approved on 7.5.2010 the compounding of sub division charges can be made only when the owner without there being an approved layout plan carries on construction?

(viii) Whether any amount towards open area penalty can be levied by Development Authorities?

(ix) Whether compounding bye-laws dated 14.1.2010 as adopted on 7.5.2010 by Allahabad Development Authority can be treated by bye-laws framed in accordance with the provision of Section 57 of 1973 Act.

(x) Whether the State Government has jurisdiction in exercise of power u/s 41 of

the 1973 Act to prescribe inspection fee, supervision fee to be charged by the development authorities for sanctioning a building plan u/s 15(2-A) of the Act?

(xi) Whether the Government Orders dated 22nd January, 1998 and 9th July, 2001 by which the State Government has prescribed charging of supervision fee/ inspection fee are liable to be struck down as beyond the power of State Government u/s 41 of the Act?

Before we consider the issues as noted above, it is relevant to note certain provisions relevant for deciding the controversy as raised in this Bunch of writ petitions.

24. The legislature enacted the Uttar Pradesh Planning and Development Act, 1973 to provide for the development of certain areas for Uttar Pradesh according to plan and for matters ancillary thereto. The object and reasons for the enactment of the Act are contained in Prefatory Note. It is relevant to note here:

"Prefatory Note--Reasons for the enactment.--

(1) The Governor of Uttar Pradesh promulgated on June 12, 1973, the Uttar Pradesh Urban Planning and Development Ordinance, 1973, which reproduced the provision of the Uttar Pradesh Urban Planning and Development Bill, 1973, as passed by the U.P. Legislative Council. The reasons for this enactment are given below.

(2) In the developing areas of the State of Uttar Pradesh, the problems of town planning and urban development need to be tackled resolutely. The existing local bodies and other authorities in spite of their best efforts have not been able to cope with these problems to the desired extent. In order to bring about improvement in this situation, the State Government considered it advisable that in such developing areas, Development Authorities patterned on the Delhi Development Authority be established. As the State Government was of the view that the urban development and planning work in the State had already been delayed it was felt necessary to provide for early establishment of such Authorities."

Section 2 of the Act contains a definition clause. Section 2(a) defines "amenity", Section 2(e) defines "development" and Section 2(ggg) defines "development fee". The above noted sections are quoted below:

"Section 2(a): "amenity" includes road, water supply, street lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Gazette specify to be an amenity for the purposes of this Act.

Section 2(e): "development" with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes re-development:

Section 2(ggg): "development fee" means the fee levied upon a person or body u/s 15 for construction of road, drain, sewer line, electric supply and water supply lines in the development area by the Development Authority)."

25. Section 3 contemplates Declaration of Development Areas by the State by issuing notification in the gazette; Section 7 provides for Objects of the Authority; Section 8 provides for preparation of master plan for the development area; Section 9 provides for Zonal Development Plans; Section 14 contains a restriction that after declaration of any area as development area u/s 3, no development of land shall be undertaken or carried out by any person or body. Sections 14(1) and (2) which are relevant are quoted below:

"14. Development of land in the development area.--

(1) After the declaration of any area as development area u/s 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government) - unless permission for such development has been obtained in writing from the [Vice-Chairman] in accordance with the provision of this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such development is also in accordance, with such plans."

26. Section 15 provides for an application for permission. Section 15(1)(2) and (2-A) which are relevant for the present case are 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 fee 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."

27. Section 55 provides for Power to make rules by the State Government; Section 56 provides for Power to make regulations; Section 57 provides for Power to make bye-laws; Sections 55, 56, and 57 which are relevant are quoted below:

"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 foregoing 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 (23) 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 annulments 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.

56. Power to make regulations.--

(1) An Authority may, with the previous approval of the State Government, make regulations not inconsistent with this Act and the rule made thereunder for the administration of the affairs of the Authority.

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

(a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum thereat;

(b) the powers and duties of the Secretary and Chief Accounts Officer of the Authority.

(c) the salaries, allowance and conditions of service of the Secretary, Chief Accounts Officer and other officers and employees;

(d) the procedure for carrying out the functions of the Authority under Chapter III and IV.

(e) the form of register of application for permission and the particulars to be contained in such register;

(f) the management of the properties of the Authority;

(g) the fee to be paid on an application for permission under Sub-section (1) of Section 15;

(h) the fee to be paid for inspection or obtaining copies of documents and maps;

(i) any other matter which has to be or may be prescribed by regulations.]

(3) Until an Authority is established for an area under this Act any regulation which may be made under Sub-section (1) may be made by the State Government and any regulation so made may be altered or by rescinded by the Authority concerned in exercise of its power under Sub-section (1).

57. Power to make bye-laws.--

The Authority may, with the previous approval of the State Government, make bye-laws consistent with this Act and the rules made thereunder for carrying out the purposes in this Act in respect of any matter affecting the general public, and without prejudice to the generality of this power, such bye-laws may provide for-

(a) the form in which any application for permission under Sub-section (1) of Section 15 shall be made and the particulars to be furnished in such application;

(b) the terms and conditions referred to in Section 16, subject to which the user of lands and buildings in contravention of plans may be continued;

(bb) the guiding principles for composition of offences u/s 32;

(c) the time and manner of payment of betterment charge u/s 30;

(d) the grant of licences to architects, town planning engineers, surveyors, draftsmen for the preparation of building plans or water supply, drainage and sewerage plans and the fees to be paid for the grant of such licence;

(e) for so long as the Zonal Development Plans are not prepared u/s 9, the matter specified in Clause (d) of Sub-section (2) of that section;]

(ee) the definition of an arterial road and the colour scheme and other specifications according to which the facade of buildings abutting such road shall be repaired, whitewashed, colour-washed or painted u/s 12-A;

(f) any other matter which has to be or may be prescribed by bye-laws."

28. The development authorities have framed various bye-laws pertaining to building regulation, certain bye-laws have also been framed for compounding of offence u/s 32, for example Allahabad Development Authority has framed Allahabad Vikas Pradhikaran Bhawan Nirman Evam Vikas upvidhi, 2008 and Allahabad Vikas Pradhikaran Bhawan Nirman Evam Vikas upvidhi, 2009, Bye-laws 2008 and 2009 shall be noted in detail for considering the submission.

29. Issue Nos. 1, 2 and 3 being inter related are being taken together.

30. The first issue is as to whether the Development Authorities are entitled to charge development fee without framing Rules u/s 55 of 1973 Act. The submission, which has been emphasized by the learned counsel for the petitioners, is that no development charge can be levied in an area, which is already developed, or in an area where development authority is not carrying out

any development activity.

31. For appreciating the above issue, it is necessary to note the relevant legislation governing the field. Prior to the enforcement of Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as the 1973 Act), there was another enactment, namely, the U.P. (Regulations of Building Operations) Act, 1958 (hereinafter referred to as the 1953 Act), which Act was enacted to provide for the regulation of building operations in Uttar Pradesh. Section 2 of 1958 Act contains various definitions. It is relevant to note that the definition of development as now under 1973 Act is the same as was in 1958 Act. Section 2(e) of 1958 Act was as follows:

"2(e). "development" with its grammatical variations and cognate expression, means the carrying out of building, engineering, mining or other operations, in, on, over or under land or the making or any material change in any building or land;"

32. u/s 3 of 1958 Act, the State Government was authorized to declare an area as regulated area with a view to prevent bad laying out of land, haphazard erection of buildings or growth of substandard colonies or with a view to carry out development and expansion of that area according to the proper planning. Section 4 defined the Controlling Authority, Section 5 provided for power to the State Government to issue directions in respect of regulated area by notification in Official Gazette. Section 5(a) provided for master plan for the regulated area and Section 6 provided that no person shall undertake or carry out the development on any site in any regulated area except in accordance with the permission of the Prescribed Authority which provision is akin to Section 14 of 1973 Act. Section 7 provided for application for permission which provision is akin to Section 15 of 1973 Act, Section 19 provided for the power of the State Government to make Rules to carry out the purpose of the Act. In exercise of power u/s 14 of 1958 Act, the Government has issued directions for all regulated area, namely, the U.P. (Regulation of Building Operation) Directions, 1960. Direction No. 8 related to sanctioning of plans and statement. Direction No. 8(vii) is relevant for the present case which reads as follows:

"The applicant has entered into an agreement with the local body concerned for the development of the land and for provision of other amenities and has either deposited the full estimated cost of the development and provision of other amenities with that local body in advance or has given to it a bank guarantee equivalent to such cost; or has entered into an agreement with that local body, providing that the full cost thereof may be realised by it out of the sale-proceeds of the plots that may be sold by the applicant:"

33. From the provision as noted above, it is clear that the Prescribed Authority before sanctioning the plan could have directed the applicant to deposit full estimated cost of development or give a bank guarantee equivalent to such cost. Thus, the power to deposit the cost for carrying out development could have

been taken from the applicant praying for sanction of the plan as per the statutory scheme of 1958.

34. U.P. Urban Planning and Development Act, 1973 as enacted provided for development of certain area of land of Uttar Pradesh according to plan and for matters ancillary thereto. The definition clause in Section 2 has already been noted. Section 15(2) provides that every application as provided in Section 15(1) shall be accompanied by such fee as may be prescribed by such rules.

35. By the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997 (U.P. Act No. 3 of 1997) after clause (gg), clause (ggg) has been inserted defining development fee. In Section 15, after sub-section (2), sub-section (2-A) has been inserted providing that the Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rate as may be prescribed. In sub-section (3), a proviso was added to the following effect:

"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."

Thus, prior to U.P. Act No. 3 of 1997 the Act did not contain any provision for a development fee, the mutation charges, stacking fees and water fees. No rules were framed by the State providing for charging of development fee etc.

36. The writ petitions were filed in this Court challenging the levy of development fee, malva fee, water charges by Development Authorities constituted under the 1973 Act. Before the Division bench of this Court, in Malti Kant and another v. Allahabad Development Authority and another, 1996 All LJ 1, it was contended that the Development Authorities are not entitled to charge development fee and other fees. The Government Order dated 12.8.1986 by which Government authorised to charge of development fee was also under challenge. The Division Bench of this Court after considering Sections 14, 15, 33, 35 & 41 held that the Development Authority could not charge any development fee. For protecting the Government Order dated 12.8.1986, learned counsel for the petitioners in the said case relied on Section 41 which argument was repelled by the Division Bench by following observations in paragraph 7-A and 8 which are quoted below.

"7A. Learned counsel for the Development Authorities have, however, tried to justify the levy of development fee on the basis of the Government order dated 12.8.1986, copy of which has been filed as Annexure I to the supplementary-affidavit filed on behalf of the respondents. Although there is no provision under the Act, authorising the Government to direct the Development Authorities to impose such a fee; but the order has been defended by the learned counsel on two grounds, namely, (i) executive power of the State; and (ii) Section 41(1) of the Act. These contentions cannot be accepted. Although, executive power of the State is coextensive with its legislative powers; but Article 265 of the Constitution prohibits the levy of tax, which includes the fee, except by authority

of law. Law means Legislative enactment and subordinate legislation. The State in exercise of its executive power cannot impose any tax or fee in the absence of specific statutory provision authorising such a charge. In this connection, reference may be made to *Harivansh Lal Mehra Vs. State of Maharashtra*, *Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others*,

8. Section 41 of the Act does not confer any such power on the Government to issue direction to the Development Authorities for imposing development fee. Under this Section Government can issue direction "for the efficient administration of this Act" and such directions are to be carried out by the Development Authority, its Chairman and Vice-Chairman. By this section the Government is authorised to issue directions of administrative nature to the Development Authorities. The Government cannot derive any power from Section 41 for directing the Authorities to levy the development fee. Supreme Court in *Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others*, wherein the levy of development fee was challenged has laid down that in the absence of any express statutory provision, it is not open to any authority to impose any such fee. The plea of implied power to levy such a charge was also rejected. The imposition of development fee as such is without authority of law and, therefore, cannot be sustained."

37. The writ petitions were allowed by the Division Bench of this Court. The levy of development fee and Government Order dated 12.8.1986, so far it has authorised the Development Authority to impose and collect development fee were quashed. Paragraph 13 of the Judgment of the Division Bench is reproduced hereunder:

"These writ petitions are partly allowed. The levy of development fee and the Government order dated 12-8-1986, so far as it has authorised the Development Authority to impose and collect development fee are quashed. The levy of Malva fee and water charges are also quashed. The respondents, Development Authorities are directed to determine the imposition of Malva fee and water charges afresh after giving a reasonable opportunity of being heard to the petitioners. As regards the composition fee, the writ petitions are dismissed. In view of the facts and circumstances of the case, there shall be no order as to costs."

38. State of U.P. and Development Authority filed SLP in Apex Court challenging the aforesaid Judgment of the Division Bench dated 21.4.1995 in *Malti Kaul's* case (*supra*). The Apex Court, vide its Judgment 21.8.1996 in *State of U.P. and Others Vs. Malti Kaul (Smt) and Another*, had allowed the said appeal. The Apex Court held that the Authority granting sanction of execution of plan in a developed area may impose a condition for payment towards the cost of amenities. After noticing the scheme of 1973 Act and Section 59 of 1973 Act and 1958 Act the Apex Court held that the Development Authority can demand amount for carrying out development and view taken by the High Court was not

correct. It is useful to quote paragraph 10, 11, 12 and 13, which are as under:

"10. By operation of Section 59, any orders issued under the predecessor Acts which are not inconsistent with the provisions of the Act shall continue to be in operation. u/s 14 of the Uttar Pradesh (Regulation of Building Operations) Act, 1950 (predecessor Act) which is *pari materia* with Section 14 of the Act, regulations have been made which are not inconsistent with that of Section 8 and in that behalf provides for sanction of plans and statements. Direction (vii) provides that the applicant has entered into an agreement with the local body concerned for the development of the land and for provision of other amenities and has either deposited the full estimated cost of the development and provision of other amenities with that local body in advance or has given to it a bank guarantee equivalent to such cost, or has entered into an agreement with the local body, providing that the full cost thereof may be realised by it out of the sale proceeds of the plots that may be sold by the applicant; provided that any such agreement between the applicant and the local body may provide for any part of the development and provision of other amenities being carried out by the applicant himself; however, that in respect of any such part he shall give adequate security to the local body to secure that he shall carry out such part of the development and provide other amenities in accordance with the approved standards and specifications to the satisfaction of the controlling authority. Under the second proviso also, power has been given to secure mortgage of the entire land to be developed in favour of the local authority as a condition for granting sanction with an agreement for providing the amenities and if the plots are to be released for sale by the mortgagor then the amount has to be paid as prescribed thereunder, the details of which are not material for the purpose of this case.

11. A reading of these provisions would clearly indicate that in a development area when an owner or body or a department of the Government undertakes to develop the land, two options are open to the development authority, namely, either it may itself undertake to provide amenities or other means of access, engineering corporations as provided under the Act or as a condition to grant sanction, it can call upon the person who undertakes development or the body of the developers who undertake development to deposit the amount required for such development or providing amenities etc.

12. In the light of direction (vii) of the directions issued in the regulations the owner or the body or the developer is enjoined either to deposit the amount demanded or give bank guarantee or mortgage the property in favour of the development authority so that it could secure sufficient security in advance for overseeing the development including providing amenities as a scheme of the development as per the sanction. It is settled law that levy of fee is a compulsory exaction for services rendered as *quid pro quo*. It is seen that the development authority is enjoined under the Act to undertake planned development of the development area in accordance with the provisions of the Act. When it undertakes such a development it carries out the development as per the plan

either itself or through any person or body which undertakes to develop the land in accordance with the sanction plan in which case necessary conditions to safeguard providing the amenities are required to be secured.

13. Thus considered, we hold that the Act specifically gives such a power. It is true that under Article 265 of the Constitution no tax can be levied without any authority of law. There is no quarrel on the proposition of law. In this case, from a reading of the aforesaid provisions it is clear that the statute, instead of prescribing the rate of developmental charges itself, has given power to the rule-making authority to regulate the collection of and payment of development fee. It is seen that under the direction which is not inconsistent with the provisions of the Act, it indicates the method and the manner in which the collection is to be secured so as to see that the area is developed in a planned manner as per the sanctions given by the competent authority. The High Court, therefore, was clearly in error in holding that there is no provision under the Act or the Rules to levy the development fee."

Thus, in view of the pronouncement of the Apex Court in *State of U.P. and Malti Kaul (supra)*, the Development Authority was entitled to levy the development fee.

The Apex Court has noted Section 59 of the 1973 Act, which is relevant for the present case Section 59(1)(c) is quoted as under:

"59(1)(c). Without prejudice to the generality of the provisions of clauses (a) and (b), and bye laws, directions or regulations under the U.P. Municipalities Act, 1916 or the Uttar Pradesh (Regulation of Building Operations) Act, 1988 or the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, as the case may be, and in force on the date immediately before the date of commencement of this Act, shall in so far as they are not inconsistent with the provisions of this Act, continue in force, until altered, repealed or amended by any competent authority under this Act."

39. In view of Section 59(1)(c) the provisions of 1958, which was in force on the date immediately before the commencement 1973 Act, insofar as they are not inconsistent with the provisions of 1973 Act, shall continue in force until altered, repealed or amended by any competent authority under this Act. The provisions of 1958 Act are thus to continue, which are not inconsistent with the provision of Act 1973 till they are altered repealed or amended.

40. As noted above, the amendment in 1973 Act was made by U.P. Act No. 3 of 1997 by which Section 2(ggg) defining development fee and Section 15(2-A) was inserted. Two Division Bench Judgments have been cited before us in which this Court, after noticing Section 15(2-A), has held that till Rules are not framed u/s 55 as per Section 15(2-A), development fee cannot be charged. In *Virendra Kumar Tyagi v. Ghaziabad Development Authority (supra)*, the Division Bench of this Court held that since Section 15(2-A) provides that the Authority shall be entitled to levy development fee, mutation charges, stacking fees and water fees

in such manner and at such rate as may be prescribed, and word "prescribed" having been defined in Section 4(33-A) of U.P. General Clauses Act, 1904, which provides that the word "prescribed", shall mean prescribed by Rules made under the Act in which the word occurs, the development fee cannot be charged unless the same is prescribed by Rules.

41. Learned counsel for the petitioner has further placed reliance upon a Judgment rendered in the case of Dr. Umesh Chandra Maheshwari Vs. Mathura-Vrindavan Development Authority and Another, in which case also the Division Bench referring to Section 15(2-A) held that till rules are framed by the State u/s 55, the development fee cannot be realised. In the said case, on an application submitted by the petitioners for sanction of plan, demand was made of betterment charges. Following was laid down in paragraph 16 of the Division Bench Judgment:

"Even u/s 57 of the Act the authority has power to make bye-laws. Therefore, it is crystal clear that either in the case of development fees or in the case of betterment charges the Rules, Regulations and Bye-laws have to be framed to attract the same, A decision by the Board without sanction of the authority to claim the external development charge is without any sanction of law. More particularly, there are no words available in the Act by the name of external development charges. The words external development charges are either synonyms or as far as closer to betterment fees since it relates to the area external to the building concerned, which has been developed on the basis of the sanctioned plan upon payment of charges, being development charges amongst others. If such betterment charge is being claimed then the authority has to satisfy that there is a betterment of the locality in compliance with Sections 35 and 36 of the Act. But if no such development is done to claim the betterment charges and no rules, no regulations and no bye-laws are framed to that extent, obviously the claim in the name of external development happens to be external to the law and a claim to enrich the authority unjustly, therefore, such claim cannot be held to be sustainable, Hence, the notices/orders impugned in this writ petition are liable to be quashed and are quashed. Thus, the writ petition is allowed, however, without imposing any cost."

42. It is noticed that in the said Division Bench, the Judgment of the Apex Court in State of U.P. v. Malti Kaul (Smt.) and another (supra) was noticed but in the discussions, the said case escaped notice of the Court. Whereas the Judgment in Virendra Kumar Tyagi (supra) was delivered by the Division Bench of this Court prior to pronouncement of Supreme Court in State of U.P. v. Malti Kaul (supra).

43. Learned counsel for Development Authorities have submitted that against Division Bench Judgment in Dr. Umesh Chandra Maheshwari (supra), a Special Leave to Appeal (Civil) No. 16615 of 2010 has been filed by Development Authority in the Apex Court in which the Apex Court on 12.11.2010 has issued notices.

44. SLP filed against the Division Bench Judgment in Virendra Kumar Tyagi has been dismissed.

45. Learned counsel for the petitioners have also brought to the notice of the Court that State has published draft rules namely Uttar Pradesh Urban Planning and Development Authority (Assessment of Levy and Collection of Development Fees), Rules, 2013, which are in process of Finalisation.

46. The statutory scheme as delineated by Section 15(2-A) and the view taken in the aforesaid two Judgments by Division Bench in Virendra Kumar Tyagi and Umesh Chandra Maheshwari that rules are required to be framed u/s 55, need no quarrel. However, the statutory provisions under 1958 Act, which were in force on the date of enforcement of 1973 Act, were entitled to continue by virtue of Section 59, sub-section (1)(c) of 1973 Act. In the aforesaid Judgments, there is no discussion or any finding that provisions of 1956 Act including 1960 directions are inconsistent with any provision of 1973 Act. As noted above, the Judgment of the Apex Court in State of U.P. v. Malti Kaul (supra) has held that the Development authorities are entitled to charge development fee on strength of 1958 Act and the direction issued therein by virtue of Section 59 of 1973 Act. The view of the Division Bench Judgment of this Court in Malti Kaul v. State of U.P. (supra) was disapproved where the High Court held that the Development Authorities has no right to charge any development fee. Normally, we had to have made a reference to the Larger Bench for reconsideration of the Division Bench Judgment in Virendra Kumar Tyagi and Dr. Umesh Maheshwari but in view of the binding Judgment of the Apex Court under Article 141 of the State of U.P. and Others Vs. Malti Kaul (Smt) and Another, we feel ourselves bound to follow the Judgment of the Supreme Court by which Judgment the Apex Court has held that Development Authorities are entitled to charge development fee.

47. One more submission, which has been pressed by the learned counsel for the petitioner is that in developed localities when an application is submitted for sanction of plan, the Development Authority is not entitled to charge any development fee since the area has already been developed. It is further submitted that Development Authorities are obliged to carry on development in developed area but no development is being carried out by it although huge development fee is demanded by the Development Authorities.

48. Section 2(ggg) as quoted above defines development fee as the fee which is levied upon a person for construction of road, drainage, sewer-line, electric supply and water supply lines in the developed area by the Development Authority. Construction of road, drainage, sewer-line, electric supply and water supply is a continuous process requiring huge funds. The definition of development fee as above cannot be read to mean that development fee can be charged only when Development Authority has already constructed the road, drain, sewer-line, electric supply and water supply. The development fee is charged for carrying out the above development activities by the development authority which it is obliged to do.

49. In supplementary counter-affidavit filed by Allahabad Development Authority dated 1.8.2011 sworn by Baij Nath, Joint Secretary, Allahabad Development Authority wherein details of certain work, which has been carried out and incurred expenses have been given. The scope of this writ petition is not to scrutinize the works carried out by the Development Authority towards development in the developed area of Allahabad or in developed area of other cities nor to scrutinize as to whether the fund realised by the Development Authorities are being utilised for carrying out the development activities or not. The issue which has come up for consideration is as to whether the development authority has any jurisdiction to charge development fee or not.

50. Even after amendment in 1973 Act by U.P. Act No. 3 of 1997, we do not find anything inconsistent in 1973 Act with the Directions 1960 as relied by the Apex Court in *State of U.P. v. Malti Kaul* (supra) so as to make the said direction authorizing the Development Authority to ask the applicant to deposit the development cost inoperative. As noted above, the process of framing of the Draft Rules 2013 has begun by the State Government and, of course, when the Rules are framed u/s 55 providing for rate, manner and mechanism for realising the development fee, the directions as contained in 1958 Act shall automatically come to an end but till the Rules are framed, it cannot be said that development authorities are having no statutory power to demand development fee from a applicant, who has applied for sanction of plant.

51. Learned counsel for the petitioners have also placed reliance on Judgment of the Apex Court in *Consumer Online Foundation, etc. Vs. Union of India (UOI) and Others, etc.*, In the said case, the Apex Court had the occasion to consider various provisions of Airport Authority of India Act, 1994, Section 12A thereof provided that Airport Authority may make a lease of premises of an airport to carry out some of its functions u/s 12 as the Airport Authority may deem fit. Section 22-A of 1994 Act provides that with the approval of the Central Government, the Airport authority may levy and collect from the embarking passengers at a airport the development fee at the rate as may be prescribed. Section 22-A of 1994 Act was amended by the Airport Regulating Authority of India Act, 2008, Relevant facts have been noted in paragraphs 4, 5 and 6 of the Judgment, which are quoted as below:

"4. Section 22-A of the 1994 Act was amended by the Airports Economic Regulatory Authority of India Act, 2008 (for short "the 2008 Act") and the amended Section 22-A provided for determination of the rate of development fees for the major airports under clause (b) of sub-section (1) of Section 13 of the 2008 Act by the Airports Economic Regulatory Authority (for short "the Regulatory Authority"). The amended Section 22-A was to take effect on and from the date of the establishment of the Regulatory Authority.

5. The Government of India, Ministry of Civil Aviation, sent a Letter dated 9-2-2009 to DIAL conveying the approval of the Central Government u/s 22-A of the 1994 Act for levy of development fees by DIAL at the Delhi Airport at the rate

of Rs. 200 per departing domestic passenger and at the rate of Rs. 1300 per departing international passenger inclusive of all applicable taxes, purely on ad hoc basis, for a period of 36 months with effect from 1-3-2009. Similarly, the Government of India, Ministry of Civil Aviation, sent another Letter dated 27-2-2009 to MIAL conveying the approval of the Central Government u/s 22-A of the 1994 Act for levy of development fees by MIAL at the Mumbai Airport at the rate of Rs. 100 per departing domestic passenger and at the rate of Rs. 600 per departing international passenger inclusive of all applicable taxes, purely on ad hoc basis, for a period of 43 months with effect from 1-4-2009.

6. The levy of development fees by DIAL as the lessee of the Delhi Airport was challenged in Writ Petition No. 8918 of 2009 by the Resources of Aviation Redressal Association. The levy of development fees by DIAL and MIAL as lessees of the Delhi and Mumbai Airports were challenged in Writ Petition No. 9316 of 2009 and Writ Petition No. 9307 of 2009 by Consumer Online Foundation. The writ petition-era contended inter alia that such levy of development fees u/s 22-A of the 1994 Act can only be made by the Airports Authority and not by the lessee and that until the rate of such levy is either prescribed by the Rules made under the 1994 Act or determined by the Regulatory Authority under the 2008 Act as provided in Section 22-A of the Act before and after its amendment by the 2008 Act, the levy and collection of development fees are ultra vires the 1994 Act. The Division Bench of the High Court, after hearing, held that there was no illegality attached to the imposition of development fees by the two lessees with the prior approval of the Central Government and dismissed the writ petitions by the impugned Judgment and order."

52. The High Court held that lessee was also entitled to levy and collect development fee the matter was taken to the Apex Court and after considering the rival submissions, the Apex Court held that lessee is not entitled for charging development fee. Following was laid down in paragraph 16 and 24 of the said Judgment:

"16. To enable the Airports Authority to perform its statutory function of establishing a new airport or to assist in the establishment of private airports, the legislature has thought it fit to empower the Airports Authority to levy and collect development fees as will be clear from clauses (b) and (c) of Section 22-A of the 1994 Act. Such development fees levied and collected u/s 22-A can also be utilised for funding and financing the costs of upgradation, expansion and development of an existing airport at which the fees is collected as provided in clause (a) of Section 22-A of the Act and in case the lease of the premises of an existing airport (including buildings and structures thereon and appertaining thereto) has been made to a lessee u/s 12-A of the Act, the Airports Authority may meet the costs of upgradation expansion and development of such leased-out airport to a lessee, but this can be done only if the rules provide for such payment to the lessee of an airport because Section 22-A says that the development fees are to be regulated and utilised in the manner prescribed by

the rules.

24. As observed by this Court in Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla, it has been consistently held by this Court that whenever there is compulsory exaction of money, there should be specific provision for the same and there is no room for intendment and nothing is to be read or nothing is to be implied and one should look fairly to the language used. Looking strictly at the plain language of Section 22-A of the 1994 Act before its amendment by the 2008 Act, the development fees were to be levied on and collected from the embarking passengers "at the rate as may be prescribed", Since the rules have not prescribed the rate at which the development fees could be levied and collected from the embarking passengers, levy and collection of development fees from the embarking passengers was without the authority of law."

53. There cannot be any quarrel to the propositions of law as laid down by the Apex Court in the aforesaid case. Section 22-A before its amendment in 2008 provided that development fee were to be levied and collected from the embarking passengers "at the rate as may be prescribed" and since Rules were not framed, collection and levy was held to be without any authority.

54. As observed above, there cannot be any exception taken to the new legislative scheme as indicated and delineated by inserting Section 15(2-A) of 1973 Act. The manner and rate of development fee is to be prescribed by the Rules but, in the event, no rules have been framed Development Authorities can rightfully utilise Section 59(1)(c) of the 1958 Act for locating their power for demanding development fee. As soon as the Rules as contemplated 15(2-A) are framed, the earlier statutory provisions of 1958 Act shall come to an end. Since manner and rate or relevant fees has not been prescribed by the Rules framed u/s 55 of the 1973 Act, to hold that the authority shall be denuded with its power to demand development fee, would not advance the object and purpose of the Act. The object and purpose of the Act is to entrust the Development Authority to carry out various development work.

55. In view of the foregoing discussion, we following the Judgment of the Apex Court in State of U.P. v. Malti Kaul (supra), hold that the Development Authorities have still the power to demand development charges as per law declared by the Apex Court in Stole of U.P. v. Malti Kaul, till the statutory scheme governing the filed at present is replaced by the Rules framed by the State u/s 55 of 1973 Act.

56. For the above reasons, we answer issue Nos. 1, 2 and 3 in following manner.

(I) The rules are required to frame by State Government u/s 55 as contemplated by Section 15(2)(A) of 1973 Act, however, even without there being rules framed the development fee can be demanded by the development authority as per the directions issued under 1958 Act by virtue of Section 59(1)(c) of 1973 Act.

(II) Issue No. 2 is answered in affirmative.

(iii) Issue No. 3 is answered in negative.

57. The issue Nos. 4 to 9 being interconnected are being taken up together.

58. The above issues relate to demand of sub-division charges and open area penalty by the development authorities on the application submitted by the petitioners praying for permission u/s 15 of the 1973 Act. In the pleadings made by the parties as well as the submissions advanced before us, sub-division of a plot of land is termed as dividing the plots in small sub plots without there being an approved lay out plan. The submission which has been pressed by the learned counsel for the petitioners is that the purchasing of plot of a land by a registered sale-deed which may consist of a part of bigger plot does not violate any law nor is an offence within the meaning of 1973 Act or any bye-laws framed thereunder. It is submitted that at the time of submitting an application seeking permission u/s 15 of the 1973 Act, for carrying out a development neither any development is undertaken by an applicant nor any offence is committed by an applicant so as to invite the liability of any compounding fee. It is submitted that purchasing a part of a plot or submitting an application for seeking permission is not a development within the meaning of Section 2(e) of the 1973 Act, hence no fee in the name of sub-division charges can be realised.

59. Learned counsel appearing for the Development Authority refuting the submissions of the learned counsel for the petitioners contended that dividing a plot into various sub-plots and submitting an application seeking permission for carrying on development is covered by the definition of development as given in Section 2(e) of the 1973 Act. It is submitted that by sub-dividing the bigger plots into various small plots material change is affected in the land which is covered by definition u/s 2(e) of the 1973 Act. It is further submitted that under the building bye-laws framed u/s 57 of the Act, 1973 there is requirement of keeping minimum 15 percent of land as vacant land at the stage of lay out plan and without approval of the lay out plan keeping 15 percent land as vacant, if the plot is sub-divided, there is a violation of the building bye-laws for which the compounding fee can be charged in accordance with the compounding bye-laws 2009.

60. Learned counsel for the respondents has referred to the schedule of compounding fee Item Nos. 10 and 11 of the said schedule.

61. Before we proceed to consider the rival contentions between the parties, it is necessary to consider the meaning of development as defined in Section 2(e) of the 1973 Act and as to whether only submission of an application seeking permission u/s 15 of the 1973 Act for a plot without there being an approved lay out plan is an offence within the meaning of Section 32 of the 1973 Act.

62. Section 2(e) of the 1973 Act, defines "development" in following words:

"2(e) "development" with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or

the making of any material change in any building or land, and includes re-development."

63. The definition of development as given in Section 2(e) of the 1973 Act is a restrictive definition.

64. It is well-settled that when the definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. In this context reference is made to the judgment of the Apex Court in *Feroze N. Dotivalaq Vs. P.M. Wadhvani and Others*, . Following was laid in paragraph 13 of the judgment:

"13. The Legislature, while defining a word or a term, is fully competent even to assign an artificial meaning to the word (see *Kishan Lal Vs. State of Rajasthan*, It can also restrict the meaning of a word by defining it in that manner. Generally, when definition of a word begins with "means" it is indicative of the fact that the meaning of the word has been restricted; that is to say, it would not mean anything else but what has been indicated in the definition itself. There can also be extensive definitions when the definition starts with "includes". This Court, in the case reported in *P. Kasilingam and others Vs. P.S.G. College of Technology and others*, observed at page 1400:

"A particular expression is often defined by the Legislature by using the word "means" or the word "includes". Sometimes the words "mean and includes" are used. The use of the word "means" indicates that definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition." (See *Gough v. Gough*, (1891) 2 QB 665 and *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*,

65. A reference may also be made to *Inland Revenue Commissioner v. Joiner*, (1975) 3 All ELR 1050 at page 1061.

66. In Section 2(e) of the 1973 Act, "development" has been defined to mean the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land. The word "development" thus comprehends in itself carrying on any operations, in, on, over or under land or the making of any material change in any building or land. When a building plan is submitted u/s 15 of the 1973 Act, seeking permission for carrying out a development, and the said plan may relate to a part of a plot without there being any lay out plan sanctioned, whether any development has been carried out in the land is the question to be answered. A person has a right to purchase and hold property and that right flows from Article 300-A of the Constitution of India. The said right cannot be curtailed without any authority of law. When a person submits an application seeking permission alongwith the building plan and when the plan may relate to a part of a land without there being any sanction of any lay out plan, there is no operation

carried out IN, ON, OVER OR UNDER LAND.

67. The application can be submitted for seeking permission u/s 15 of the 1973 Act, by merely preparing a drawing of the site plan of the plot without even going on the spot.

68. Of course, when a person carries on any operation i.e. operation or building activity in a sub-divided plot without there being any lay out plan, the same shall come in the four squares of the definition of development. Operation may include construction of even a boundary wall demarcating the land or carrying out any building activity. Thus, we find substance in the submission made by the learned counsel for the petitioner that merely by submitting an application seeking permission u/s 15 of the 1973 Act, no development within the meaning of Section 2(e) of the 1973 Act takes place nor any sub-division charges can be demanded at that stage. The further submission which has also been pressed by the learned counsel for the petitioners is that the compounding fee for sub-division without any approval of lay out plan can only be charged when sub-division is declared an offence by or under the 1973 Act. Composition of offences is provided u/s 32 of the 1973 Act which is to the following effect:

"32. Composition of Offences.--

(1) Any offence made punishable by or under this Act may either before or after the institution of proceedings, be compounded-by [the Vice-Chairman (or any officer authorised by him in that behalf by general or special order)] on such terms, including any term as regards payment of a composition fee, as [the Vice-Chairman] (or such officer) may think fit.

(2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded."

69. Sub-section (1) of Section 32 provides that any offence made punishable by or under this Act may be compounded. Thus, the precondition for compounding is committal of an offence made punishable by or under the Act. Section 32(1) of the 1973 Act uses two phrases i.e. offence made punishable (i) by or (ii) under this Act. Thus the offence which can be compounded has to be made punishable by or under this Act. There is no difficulty in finding out the offences which has been made punishable by 1973 Act, Section 26 of the 1973 Act deals with penalty. Section 26 of the 1973 Act is thus an example of an offence which has been made punishable under the Act itself. Section 26 of the 1973 Act is quoted below:

"26. Penalties.--Any person who whether at his own instance or at the instance of any other person or any body (including a department of Government) undertakes or carries out development of any land, in contravention of the master plan or zonal development plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any condition subject to

which such permission approval or sanction has been granted shall be punishable with fine which may extend to [fifty thousand rupees], and in the case of a continuing offence with further fine which may extend to [two thousand five hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who uses any land or building in contravention of the provisions of Section 16 or in contravention of any terms and conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to [twenty-five thousand rupees] and in the case of a continuing offence, with further fine which may extend to [one thousand, two hundred and fifty rupees] for every day during which such offence continues after conviction for the first commission of the offence.

(3) Any person who obstructs the entry of a person authorised u/s 25 to enter into or upon any land or building or molests such person after such entry shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

70. Sections 26-A, 26-B, 26-C and 26-D of the 1973 Act, are other examples of offences which have been defined by the 1973 Act, When Section 32 of the 1973 Act uses the word "under this Act" that may include any statutory provision framed under the Act for example, any offence declared by rules, regulations or bye-laws. Thus, an offence can also be defined by the bye-laws framed u/s 57 of the 1973 Act. Thus, compounding of an offence declared under the bye laws is also fully permissible u/s 32 of the 1973 Act.

71. Now we revert to the Compounding bye-laws 2009 as framed on 14.1.2010 and approved by the A.D.A. on 7.5.2010 to find out as to what are the offences which have been declared offences under the compounding bye-laws 2009. Bye-laws 3 contains provision as to when permission is to be granted by Vice Chairman of the Allahabad Development Authority for compounding or refusing a permission for compounding regarding unauthorised construction or development carried out.

72. A perusal of the bye-laws 3 and different sub bye-laws under bye-laws 3 indicates that most of the bye-laws where compounding is to be made relates to carrying out unauthorised construction. At the stage of submitting an application u/s 15 for permission, there is no case of any construction made since the applicant is seeking permission for carrying out construction or development.

73. Bye-laws 3.1, 3.1.1, 3.1.2, 3.1.3, 3.1.4 and 3.1.5 all refers to the constructions made contrary to the various provisions. Bye-laws 3.2 lays down that offences mentioned therein are not compoundable.

74. Bye-laws 3.2.1, 3.2.2 and 3.2.3 which are relevant in the present case are quoted below:

75. Bye-laws 4 provides for calculation of compounding fee for different

unauthorised construction. Bye-laws 4 is quoted below:

In the present case the schedule Item Nos. 10 and 11 have been challenged, Items 10 and 11 of the bye-laws are as follows:

76. A perusal of the aforesaid bye-laws indicates that sub-division of plots itself without carrying out any construction or development in sub-divided plots has not been declared as an offence. When a person carries out any development or carries out any construction on a plot with regard to which lay out plan has not been sanctioned, he may be held guilty of committing an offence which may be compounded. Further, the bye-laws mentions about various offences which cannot be compounded.

77. In the present case we are not entering into the issue with regard to any particular construction as to whether an offence has been made which is compoundable or not, rather we are considering the submissions as on what stage the compounding fee can be charged without there being any sanctioned lay out plan. A perusal of the bye-laws as indicated above, clearly indicates that at the stage of submission of only an application seeking permission to carry out development u/s 15 of the 1973 Act, no development is undertaken by an applicant and at that stage the development Authority is not within its jurisdiction to impose any compounding fee in the name of subdivision charge. Sub-division charge which is an offence and can be compounded is only that sub-division where an applicant carries on development work or any construction work without a sanctioned layout plan.

78. We, thus, conclude that the subdivision charges cannot be levied at the stage when the applicant has submitted only an application seeking permission u/s 15 of the 1973 Act, for carrying out any development. From the aforesaid discussion, it follows that when a person carries out any development or carries out any construction on a plot with regard to which there is no lay out plan approved and construction is on a subdivided plot, the compounding fee can be charged under the compounding bye-laws 2009.

79. Now coming to the open area penalty which has been imposed by various development authorities including the A.D.A. it is on the record that the open area penalty has already been withdrawn by the A.D.A. vide its resolution passed on 16.1.2010. In this context specific pleading has been made both in the counter-affidavit filed by the State of U.P. As well as the counter-affidavit filed by the A.D.A., In this context reference is made to para. 21 of the counter-affidavit of the State where following has been pleaded.

"21. That, it is relevant to submit that the provision for the open space penalty, which had been imposed in terms of the Board's Resolution No. 1172 dated 29.9.2000 passed by the board of the Allahabad Development Authority, was subsequently withdrawn vide Board's Resolution No. 1534 dated 16.1.2010 is being annexed herewith and marked as ANNEXURE C.A.-17 to this counter-affidavit."

80. As observed above, any penalty can be charged or compounding fee can be realised only when there is an offence committed by an applicant. Offence should be an offence which has been declared an offence under the 1973 Act, or under the Act. No provision in the Act or under the 1973 Act, has been pointed out by the learned counsel appearing for the Development Authority to indicate that the open area penalty can be levied in consequence of any offence being committed by an applicant, Thus, we are of the view that the open area penalty cannot be charged at the time of granting permission u/s 15 of the 1973 Act by the Development Authority.

81. As noted above, the aforesaid open area penalty has already been withdrawn by the A.D.A. on 16.1.2010.

82. In view of the foregoing, our answer to issue Nos. 4 to 8 is as follows:

(4) Mere sub-division of a plot of land by submitting an application u/s 15 of the 1973 Act for seeking permission for carrying out development, without carrying out any development or making any construction is not covered within the definition of "development" prescribed u/s 2(e) of the 1973 Act.

(5) Sub-division of a plot has not been declared an offence under the 1973 Act or under any bye-laws, rules or regulations framed thereunder.

(6) Subdivision charges cannot be levied by development authorities on the ground that no lay out plan has been got approved by the owner at the time of submission of application seeking permission u/s 15 of the 1973 Act, since such sub-division has not been declared an offence within the meaning of Section 32 of the 1973, Act.

(7) As per compounding bye-laws dated 14.1.2010 as approved on 7.5.2010 by the A.D.A. compounding fee for sub-division of plots can be charged when the owner without there being any approved lay out plan carries on construction or carries on any development on the plot of land.

(8) No amount towards open area penalty can be levied by the Development Authority at the time of seeking permission u/s 15 of the 1973 Act.

83. Now, we come to issue No. 9. The submission which has been pressed by the learned counsel for the petitioner is that the bye-laws as per Section 57 of the 1973 Act has to be framed by the Development Authorities and the bye-laws dated 14.1.2010 has been circulated by the State Government, hence the same cannot be said to be the bye-laws as framed u/s 57 of the 1973 Act. A copy of the Government Order dated 14.1.2010 has been filed by the State Government in its counter-affidavit. State of U.P., has filed Supplementary-affidavit dated 10.8.2011 duly sworn by Shambhu Nath, Deputy Secretary, Department of Housing and Urban Planning, Government of U.P. Lucknow. The letter dated 10.8.2011 has been brought on the record, whereas the suggestions from all Development Authorities were called for with regard to the revised compounding bye-laws.

84. Subsequently, a proposed bye-laws dated 1.9.2009 was prepared by the State Government. The State Government finalised the model bye-laws and issued the bye-laws dated 14.1.2010 to all the development authorities. The A.D.A. vide its resolution dated 7.5.2010, adopted the bye-laws dated 14.1.2010 namely: "Allahabad Vikas Pradhikaran Apradho Ka Shaman Upvidhi, 2009".

85. Section 57 of the 1973 Act, provides that the Authority may, with the previous approval of the State Government, may make bye-laws. Thus, the authority is empowered to make bye-laws with the previous approval of the State Government. Thus, the power to make bye-laws is hedged by condition of the previous approval of the State Government. Present is a case, where model bye-laws were circulated to all the development authorities including the A.D.A. The said bye-laws were prepared after obtaining suggestions and objections from all the development authorities, which facts have been brought on record in the counter-affidavit and supplementary counter-affidavit of the State Government. The model bye-laws dated 14.1.2010 were subsequently adopted by the A.D.A. on 7.5.2010 which resolution has also been brought on record in the supplementary counter-affidavit filed by the A.D.A.

86. In view of the above, it cannot be said that the bye-laws have not been framed by the authority. Thus, we do not find any infirmity in the bye-laws dated 14.1.2010 as adopted on 7.5.2010 by the A.D.A. and thus our answer to issue No. 9 is that the bye-laws dated 14.1.2010 as adopted on 7.5.2010 are the bye-laws within the meaning of Section 57 of the 1973 Act.

87. Issue Nos. 10 and 11 being interconnected are being taken up together.

88. Section 41 of the 1973 Act, empowers the State Government to issue directions from time to time for the efficient administration of this Act. Section 41(1) of the 1973 Act is quoted below:

"41 Control by State Government.--

(1) The Authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act."

89. The State Government vide its Government Orders dated 22.1.1998 and 9.7.2001 has prescribed charging of supervision/inspection fee by the development authorities. Whether prescription of supervision/inspection fee is within the power of State Government u/s 41 of the 1973 Act is the question which is to be answered.

90. It is well-settled that both the tax and fee are compulsory exactions of money by public authority. Article 265 of the Constitution of India provides that no tax can be levied or collected except by an authority of law. There cannot be any dispute to the proposition that fee charged by the development authority has to flow from an authority of law.

91. As noted above, Section 15(2-A) of the 1973 Act provides that 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.

92. There is no dispute that the State Government by the rules may prescribe the development fee. The orders of the State Government dated 22.1.1998 and 9.7.2001 are the orders which are referable to the power of the State Government u/s 41(1) of the 1973 Act. The power given to the State Government u/s 41(1) of the 1973 Act are the powers for the efficient administration of the Act.

93. Efficient administration of the Act, comprehends the concept of something which is already there in the 1973 Act, with regard to which direction has been issued by the State Government.

94. The Apex Court in Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, , laid down that even in the absence of express provision, a delegated authority cannot impose tax or fee. Following was laid down in paragraphs 7 and 8.

"7. After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power in the matter of exercise of focal power. The facts and circumstances in the case of District Council of Jowai are entirely different. The exercise of powers by the Autonomous Jaintia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for a specific purpose by the autonomous District was justified and such power was implied. The said decision cannot be made applicable in the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in Khargram Panchayat Samiti case also deals with the exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee.

8. The High Court has referred to the decisions of this Court in Hingir case and Jagannath Ramanuj case and Delhi Municipal Corporation's case (supra). It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one

should look fairly to the language used. We are, therefore, unable to accept the contention of Mr. Goswami. Accordingly, there is no occasion to interfere with the impugned decision of the High Court. The appeal, therefore, fails and is dismissed with no order as to costs."

95. Section 41 of the 1973 Act, does not specifically indicate exercise of any power by the State for prescribing a fee to be charged by the development authorities.

96. A Division Bench of this Court in *Virendra Kumar Tyagi v. Ghaziabad Development Authority and others*, 2006 (1) AWC 834, had occasion to consider the provisions of Section 41 of the 1973 Act, in context of prescribing any fee to be charged by the Development Authority. Following was laid down in paragraph 13.

"13. So far as reliance placed on Section 41 of the Act to the effect that the respondents are bound to carry out such directions as may be issued to it from time to time by the State Government is concerned, sub-section (1) of Section 41 of the Act provides that the directions which have to be issued by the State Government is for the efficient administration of the Act. For ready reference sub-section (1) of Section 41 is reproduced below:

"41(1) The Authority, the Chairman or the Vice Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act."

97. From a reading of the aforesaid provision it will be seen that only such direction which has been issued by the State Government for the efficient administration of the Act has to be carried by the Authority including its Chairman and Vice Chairman. Here the direction issued by the State Government vide Government order dated 6th February, 1997, cannot be said to have been issued for the efficient administration of the Act inasmuch as it has prescribed the mutation charges which, otherwise, is required to be prescribed by Rules to be duly notified in the Gazette in terms of Sections 15(2A) and 55(1) of the Act read with Section 4(33A) of the U.P. General Clauses Act, 1904. Likewise reliance placed by the learned Counsel for the respondent on the provisions of Section 57 of the Act which empowers the Authority to make bye-laws consistent with the Act and the rules for carrying out the purposes of the Act is also misplaced. Under the aforesaid provisions there should be specific statutory provision empowering the authority to impose level otherwise it will be illegal. The order dated 1st April, 1998 and Board's resolution dated 12th February, 1999, even though if they are treated to be bye-laws framed under the Statute the Authority cannot be said to have the authority to levy mutation charges for the simple reason that mutation charges can be prescribed only by making the Rule and not otherwise.

98. The Apex Court in *Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others*, , had occasion to consider the provisions of Section 41(1) of the 1973

Act. In the said case the State Government has issued direction to the Ghaziabad Development Authority for allotment of a plot in the above context the Apex Court laid down in paragraphs 14, 15, 20, 35 and 36:

"14. In Bangalore Medical Trust Vs. B.S. Muddappa and others, this Court considered the provisions of a similar Act, namely. Bangalore Development Authority Act, 1976 containing a similar provision and held that Government was competent only to give such directions to the authority as were in its opinion necessary or expedient and for carrying out the purposes of the Act. The Government could not have issued any other direction for the reason that the Government had not been conferred upon unfettered powers in this regard. The object of the direction must be only to carry out the object of the Act and only such directions as were reasonably necessary or expedient for carrying out the object of the enactment were contemplated under the Act. Any other direction not covered by such powers was illegal.

15. In Poonam Verma and Others Vs. Delhi Development Authority, a similar view has been reiterated by this Court dealing with the provisions of Delhi Development Authority Act, 1957. In the said case, the Central Government had issued a direction to make allotment of flat out of turn. The Court held as under:

"13...Section 41 of the Act, only envisages that the respondent would carry out such directions that may be issued by the Central Government from time to time for the efficient administration of the Act. The same does not take within its fold an order which can be passed by the Central Government in the matter of allotment of flats by the Authority. Section 41 speaks about policy decision. Any direction issued must have a nexus with the efficient administration of the Act. It has nothing to do with carrying out of the plans of the authority in respect of a particular scheme....

15. Evidently, the Central Government had no say in the matter either on its own or under the Act. In terms of the brochure, Section 41 of the Act does not clothe any jurisdiction upon the Central Government to issue such a direction."

20. In K.K. Bhalla Vs. State of M.P. and Others, this Court has delineated the functions of the State Government and the Development Authority, observing that:

"59. Both the State and the JDA have been assigned specific functions under the statute. The JDA was constituted for a specific purpose. It could not take action contrary to the scheme framed by it nor take any action which could defeat such purpose. The State could not have interfered with the day-to-day functioning of a statutory authority. Section 72 of the 1973 Act authorizes the State to exercise superintendence and control over the acts and proceedings of the officers appointed u/s 3 and the authorities constituted under the Act but thereby the State cannot usurp the jurisdiction of the Board itself. The Act does not contemplate any independent function by the State except as specifically provided therein.

60. the State in exercise of its executive power could not have directed that lands meant for use for commercial purposes may be used for industrial purposes.

62. the power of the State Government to issue direction to the officers appended u/s 3 and the authorities constituted under the Act is confined only to matters of policy and not any other. Such matters of policy yet again must be in relation to discharge of duties by the officers of the authority and not in derogation thereof.

63. The direction of the Chief Minister being dehors the provisions of the Act is void and of no effect.

35. Section 41 of the U.P. Urban Planning and Development Act, 1973 reads as under:

"41. Control by State Government.--(1) The Authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2)

(3) The State Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit:

Provided that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

(4)

36. Sub-section (1) thereof empowers the State Government to issue general directions which are necessary to properly enforce the provisions of the Act. Sub-section (3) thereof makes it crystal clear that the State Government is a revisional authority. Therefore, the scheme of the Act makes it clear that if a person is aggrieved by an order of the authority, he can prefer an appeal before the Appellate Authority i.e. Divisional Commissioner and the person aggrieved of that order may file Revision Application before the State Government. However, the State Government cannot pass an order without giving opportunity of hearing to the person, who may be adversely affected."

99. In view of the proposition of law as noted above, u/s 41(1) of the 1973 Act, the State Government cannot exercise power to prescribe any fee to be charged by the development authority, whereas the prescription of fee is already dealt by the provisions under Sections 15, 55, 56 and 57 of the 1973 Act and the prescription of fee to be charged by the development authority while obtaining permission u/s 15 of the 1973 Act has to be regulated by the statutory provisions contained in the 1973 Act.

100. In view of the foregoing discussions, we are of the view that no direction can be issued by the State Government u/s 41 of the 1973 Act for prescribing a fee to be charged by the development authority, hence the Government Orders dated 22.1.1998 and 9.7.2001 prescribing charging of supervision fee/inspection fee are beyond the powers of the State Government, and cannot be sustained.

101. We, thus hold that the State Government has no jurisdiction to prescribe (sic)ging of supervision fee/inspection fee by the development authority in exercise of power u/s 41 of the 1973 Act. The Government Orders dated 22.1.1998 and 9.7.2001 deserves to be set-aside. 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.