
(2013) 12 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 56485, 53710, 54482, 57531, 55784, 56837 of 2013, 19095 of 2009, 59969 of 2012, 60468 of 2013, 38066 of 2012, 62690, 54466, 60841, 64151, 63362, 67155 of 2013, 63173 of 2010, 7381, 67155, 20280 and 67153 of 2013

Smt. Rekha Rani

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 1 ADJ 325 : (2014) 103 ALR 577 : (2014) 123 RD 465

Hon'ble Judges : Arun Tandon, J;Anjani Kumar Mishra, J

Bench : Division Bench

Advocate : R.K. Sharma, Anoop Trivedi, Rajeev Kumar Saini, K.D. Tripathi, Pankaj Kumar Shukla, Neeraj Kumar Srivastava, Arvind Srivastava, Bheem Singh, Saurabh Tiwari, Sushil Singh, Vinay Khare, Satish Chaturvedi, Ajit Ray, Jamal Khan and Pramod Kumar Srivastava, for the Appellant; A.P. Paul, Satyam Yadav, R.K. Pandey, S.K. Misra, J.N. Maurya, M.C. Chaturvedi, Alpna Dwivedi, Akhilesh Kumar Singh, Nilamber Tripathi, R.M. Upadhyay, Anil Tiwari, Dhananjay Awasthi, Prem Prakash Yadav, Dharmendra Shukla, Satyam Singh, Shiv Nath Singh, Q.H. Siddiqui, Keshav Kumar Srivastava and B. Dayal, for the Respondent

Final Decision : Allowed

Judgement

1. The above mentioned writ petitions have been filed challenging the orders of the various Development Authorities constituted u/s 4 of the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as the "Act, 1973") demanding (a) External development fee (b) Internal development fee (c) Sub-division charges (d) park fee (e) compounding fee in respect of sub-division charges, (f) inspection/supervision charges, (g) labour cess, (h) bank guarantee for the value of the cost of the land and the constructions which are required to be raised by a developer of more than 3000 sq. meters of land and above, under the Government Order dated 26.9.2011 (k) bank guarantee for rain water harvesting system to be installed in the buildings and lastly (1) Impact fee,

which is being demanded by the Gorakhpur Development Authority only. We have heard Sri H.N. Singh, Senior Advocate, Sri Anoop Trivedi, Sri Rajeev Kumar Saini, Sri R.K. Saini, Sri R.K. Sharma, Sri K.D. Tripathi, Sri Pankaj Kumar Shukla, Sri Neeraj Kumar Srivastava, Sri Arvind Srivastava, Sri Bheem Singh, Sri Saurabh Tiwari, Sri Sushil Singh, Sri Vinay Khare, Sri Satish Chaturvedi, Sri Ajit Ray, Sri Jamal Khan and Sri Promod Kumar Srivastava advocates on behalf of petitioners, we have also heard Sri Rares Upadhy Chief Standing Counsel on behalf of the State, and Sri Ashwani Mishra, Senior Advocate assisted by Sri A.B. Paul Advocate on behalf of Allahabad Development Authority, Sri H.N. Singh Advocate on behalf of Aligarh Development Authority, Sri B.D. Pandey on Advocate behalf of Gorakhpur Development Authority, Sri Dhamendra Shukla Advocate on behalf of Bareilly Development Authority, Sri Rajesh Kumar Pandey Advocate on behalf of Muzaffar Nagar Development Authority, Sri J.N. Maurya Advocate on behalf of Agra Development Authority and Sri Prem Prakash Yadav Advocate on behalf of Bulandshahar Development Authority.

2. These writ petitions raise common question of facts and law with regard to the competence of the Development Authorities constituted under Act 1973 to levy and demand the aforesaid fees before sanctioning the building plan as per the application submitted u/s 14 of the 1973.

3. The petitioners have been clubbed together and are being decided under this common judgment.

4. It may be recorded that the demand under the following heads: i.e. (a) permit fees (b) malwa fee (c) water fees (d) Triveni Mahotsav fee, has not been challenged before us. The petitioners have no objection to the payment thereof.

5. The petitioners question the levy of external development fee, internal development fee, referable to Section 15(2-A) of Act, 1973.

6. The other fees, which are questioned in the present writ petitions, namely, the Sub-Division charges, the compounding fees in respect of the sub-division, supervision fee and inspection fees, are not covered by Section 15(2-A) of the Act, 1973.

7. In addition to the above, there is a challenge to the demand of bank guarantee for the value of the land and the constructions required to be raised qua the houses for the economically weaker Section and lower income group persons as also to the demand of bank guarantee for the rain water harvesting system which is to be provided in terms of and under the Government Order issued on the subject, in new buildings to be constructed.

8. When the petitioners before this Court had filed plans for grant of sanction u/s 14 of the Act, 1973, demand has been made by respondent-Development Authorities to deposit the fees under various heads including those detailed herein above before grant of such sanction.

9. At the very outset it may be recorded that the Apex Court in the case of State

of U.P. and Others Vs. Malti Kaul (Smt) and Another, , had upheld the power to demand the development fee by the Development Authorities having regard to language of Sections 33, 41 read with Section 14 and Section 56 of Act, 1973 but subsequent thereto, there has been amendments in the Act, 1973 which have materially altered the legal position.

10. The amendments, which have been introduced by U.P. Act No. 3 of 1997 and U.P. Act No. 1 of 2008, material for our purposes, are as follows:

City development charge has been defined u/s 2(ddd). Development fee has been defined u/s 2(ggg). Section 2(ii) defines mutation charges. Section 2(kk) defines stacking fees. Section 2(11) defines water fees. Amended Section 15(2-A) of Act, 1973 provides for levy of development fees, mutation charges, stacking fees and water fees. 3rd Proviso to Section 15(3) of Act, 1973 confers a right upon the Development Authority to get the fees and charges levied under sub-section (2-A) deposited before granting permission as required u/s 14 of Act, 1973.

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

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

....

(ddd) "city development charge" means the charge levied on a private developer u/s 38-A for the development of the land;

(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;

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

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

[(11) "water fees" means the fees levied u/s 15 upon a person or body for using water supplied by the Authority for building operation or construction of buildings;]

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

Section 7. Objects of the Authority.--The objects of the Authority shall be promote and secure the development of the development area according to plan and for that purpose the Authority shall have the Power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity to dispose of sewage and to provide and maintain other services

and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:

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

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

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

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

(2) The master plan shall define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

serve as a basic pattern of framework within which the Zonal development plans of the various zones may be prepared.

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

9. Zonal Development plans.--

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

(2) A zonal development plan may--

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

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

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

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

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

- (ii) the allotment or reservation of land for roads, open spaces, gardens, recreation-grounds, schools, markets and other public purposes:
- (iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out,
- (iv) the erection of buildings on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of buildings:
- (v) the alignment of buildings of any site;
- (vi) the architectural features of the elevation or frontage of any building to be erected on any site,
- (vii) the number of residential buildings which may be erected on plot or site;
- (viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense such amenities are to be provided:
- (ix) the prohibitions or restrictions regarding erection of shops, workshops, warehouses of factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality,
- (x) the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained:
- (xi) the restrictions regarding the use of any site for purposes other than erection of buildings;
- (xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing buildings being erected haphazardly, in such zone or area.

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

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

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

17. Section 15 of the Act, 1973 provides for making of an application in writing before the Vice-Chairman for permission u/s 14 in such manner, as may be prescribed by bye-laws and has to contain such particulars, as may be prescribed

by rules. Sub-section (2-A) of Section 15 permits levy of development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.

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

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

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

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

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

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

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

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

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

....

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

20. Section 34 of the Act, 1973 permits the development authority to transfer

the developed areas with or without amenities to the local bodies on the conditions to be settled by the Government.

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

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

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

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

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

(2) Such betterment charge shall be an amount-

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

(ii) in respect of property situated outside such township, colony or other area, as aforesaid, not exceeding one-third of the amount,

by which the value of the property on the execution of the development scheme, estimated as if the property were clear of buildings exceeds the value of the property prior to such execution, estimated in like manner.

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

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

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

Provided that the land use conversion charge shall be recovered from the owner

of land by the Authority prior to final notification under sub-section (4) of Section 3 of this Act:

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

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

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

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

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

Section 55 of the Act, 1973 reads as follows:

55. Power to make rules.--(1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

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

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

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

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

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

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

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

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

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

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

32. Section 9 contemplates preparation of the zonal development plans. These zonal development plans have to be prepared simultaneously with the preparation of the master plan or as soon as may be possible, subsequent to the preparation of the master plan. These zonal plans have to provide for a site plan and use-plan for the development of the zone. It has to depict approximate locations and extents of land use proposed in the zone for such things as public

buildings, public works and utilities, roads, sewage, drains, business areas, markets, schools, hospitals, public and private open spaces and other categories of public and private uses.

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

In the affidavit filed by the Principal Secretary, Housing and Urban Planning dated 4.12.2013 vide paragraphs No. 10 and 11 he has disclosed the role and function of development authorities.

34. For ready reference paragraphs No. 10 and 11 are quoted herein below:

10. That keeping in view the various provisions of the Act, the role and functions of the development authorities may be classified into following four categories:

(1) Urban Planning Function : it includes 3 levels of planning:

- (a) Master Plans,
- (b) Zonal Development Plans,
- (c) Sub-division/Layout Plans.

(2) Development Function: it includes following activities:

- (a) Land acquisition,
- (b) Infrastructure development,
- (c) Execution of housing and other schemes.

(3) Regulatory Function : it comprises of following regulations:

- (a) Enforcement of zoning regulations through land use permissions,
- (b) Development control or enforcement of Building Bye-laws through grant of development and building permit by way of plan approval,
- (c) Architectural Control,
- (d) Compounding and Regularization.

(4) Facilitator Role : The development authority facilitates following sectors for promoting and securing planned development of the development area:

- (a) Private Sector (both organized as well as individuals),
- (b) Cooperative Sector,
- (c) Public-Private-Partnerships,
- (d) Public interface : Authority is also responsible for implementation of the

Citizen Charter, redressal of public grievances and dissemination of information, Government Policies and Guidelines, etc. for the use of public.

11. That as per the prevailing approach and methodology, there are three levels of Urban Planning:

- (1) Master Plan,
- (2) Zonal Development Plan,
- (3) Sub-division/Layout Plan.

A brief description of these 3 stages is as follows:

(1) Master Plan: It is long-term (15-20 years) land use plan for the planned development of the city prepared under Section- 8, 10 and 11 of the Act. It provides comprehensive proposals for socio-economic development and spatial development indicating the manner in which the use of land and development therein shall be carried out by the Authority and other related agencies. Thus, master plan is a design for the physical, social and economic development of the city, and also to improve the quality of life as well.

(2) Zonal Development Plan.--It is a detailed plan for a zone prepared within the framework of master plan u/s 9, 10 and 11 of the Act containing proposals for zone level land uses, roads and streets, parks and open spaces, community facilities, services and public utilities, etc.

(3) Sub-Division plan or Layout Plan.--It is a micro land use plan showing sub-division of any land or portion thereof into more than one parcel for the purposes of sale or otherwise. Subdivision plan may be for a new area or for such land which is reclaimed after clearance of existing development especially in old build up or blighted areas of the city.

35. He has tried to explain the meaning of the expression "Stages by which such development shall be carried out" as contained in Section 8(2)(a) of the Act to suggest that various master plans which are prepared from time to time reflect the stages by which development has been effected. We have serious doubts with regard to the interpretation so placed.

36. However, it has been admitted in the affidavit filed on 4.12.2013 that as on date only 3 zonal plans from various development authorities throughout the State have been received and approved by the State Government.

37. We may record that the State Government and the Development Authorities through-out the State of Uttar Pradesh have made a mockery of the very purpose of planned development as conceived by Sections 8 and 9 of the 1973 Act. The indifferent attitude of the State Government and Development Authorities towards planned development as contemplated under the Act with the preparation of the master plan and zonal plans is reflected from one simple fact which is admitted on record namely that till date i.e. even after 40 years of

the passing of the Act, 1973, only three zonal plans have been prepared and approved by the State Government, in the entire state of Uttar Pradesh one of which is for a part of the Zone B within the territorial limits of the Allahabad Development Authority and two in respect of the territorial limits of the Agra Development Authority.

It was conceived by the State Legislature u/s 9 of the Act that the zonal plan shall be prepared simultaneously with the master plan or as soon as may be thereafter. But the words "simultaneously" and "as soon as may be thereafter" occurring in Section 9 of the Act, 1973, have been stretched by the Development Authorities and the State government to mean as "at whatever point of time State/the Development Authority may so desire". As till date the Development Authorities in the State of Uttar Pradesh and the State Government have not been able to understand the meaning of the simple words "simultaneously" and "as soon as may be", Therefore, they have not proceeded to prepare zonal plans for the entire development area within the territorial jurisdiction of the development authority for last forty years.

38. In our opinion, unless the zonal plans are prepared and approved, the very purpose of establishment of the development authorities is frustrated. The zonal plan as noticed above are required to provide for various instructions in respect of any particular parcel of land being reserved for a particular purpose and further the notification of the areas which are to be left for public utilities like parks, private open spaces, hospital, school etc.

39. This Court made a pointed query as to what development had exactly been done by the Allahabad Development Authority in terms of the zonal plan prepared for the part of Zone B and produced before this Court being zonal plan B-4. The only information supplied to this Court is that certain roads and road crossings have been beautified by the A.D.A. Counsel for the petitioner disputes the correctness and submits that even these developments have been done from the funds provided for the Magh Mela. We may only record that the work of beautification so carried out by the A.D.A. has not been so disclosed in the Zonal Plan- 4 prepared for the city of Allahabad. As a matter of fact absolutely nothing could be demonstrated to have been done by the Development Authority, so as to establish that any development work has been carried out in terms of the zonal plan B-4 prepared by it.

40. We have no hesitation to record that the State and the Development Authorities have read the provisions of the Development act to mean only sanctioning of maps for constructions and as a source for collection of money under various heads. There has been little or no concern for the planned development as is contemplated to be done in the light of Sections 8 and 9 of the Act by preparation of the zonal plans.

41. We are further surprised by the manner in which the Secretary of the Urban Planning and Development has responded to the order passed by this Court in

the present proceedings.

42. The Chief Standing Counsel on behalf of the Secretary submitted that Mr. Sadakant, Secretary of the Urban Planning and Development has assumed charge of the office of the Secretary Housing and Urban Planning only in April, 2013 and therefore the period of nine months is too short to comply with the statutory provisions and therefore the zonal plans could not be prepared. What has been done by the earlier Secretaries who had been working in the same department for last forty years has not been disclosed and as to why the State Government and the Development Authorities did not frame the zonal plans, is not known.

43. If there had existed a provision in the Act for initiation of action against the Officers who do not perform their duties as contemplated, under the Act, 1973 this Court would have directed action against them. We are constrained to direct the Chief Secretary of the State to take action against the concerned Secretaries of the concerned department and the various Vice-Chairmen of the Development Authorities, who for last forty years did not have time to understand and to prepare the zonal plans as contemplated under the said Act. It is high time for the officers being made accountable and for not being permitted to go scott free merely on the plea that they had assumed the office only nine months earlier etc.

44. Public and development work cannot be made to suffer because of the uncaring attitude of the persons, who hold office of responsibility under the Act, 1973. Responsibility must necessarily be fastened upon the officers who have violated the provisions of the Act with impunity and in complete disregard to the very purpose for which the Act, 1973 had been passed by the legislature.

45. The Chief Secretary shall make a detailed enquiry and shall take all suit able action as may be warranted, within four months from the date a certified copy is filed before him, both in the matter of fixing the accountability for non-preparation of the zonal plans during these 40 years, as also for ensuring that the zonal plans are prepared for each of the development areas under various development authorities through out the state.

46. We leave the issue at this stage with the hope that the Chief Secretary of the State shall act keeping in mind that it is in the larger interest of the public that deliberate violation of the provisions of the Act is not perpetuated by the officers responsible.

47. Now turning to the issue pertaining to the challenge made in these writ petitions qua the various fees demanded by the development authorities while granting permission to raise constructions u/s 14 of the Act, 1973.

48. At the outset, we may record that a Division Bench of this Court in the case of Sabia Khan and another v. Allahabad Development Authority & Another passed in Civil Misc. Writ Petition No. 23281 of 2001, had allowed the writ petition filed for challenging the legality and validity of the levy of water charges, malba

charges, sub-division charges, development charges and open space charges, vide judgment and order dated 1st July, 2003. Not being satisfied, the Allahabad Development Authority preferred an special leave to appeal before the Apex Court, which was converted into Civil Appeal No. 4351 of 2004. The Apex Court vide judgment dated 11th July, 2006 in Allahabad Development Authority and Another Vs. Sabia Khan and Another, , set aside the order of the High Court and remanded the matter for decision afresh on the ground of non-impleadment of State of Uttar Pradesh as a party in the writ petition and other technical grounds. However, it was clarified in the said judgment that the Apex Court has not applied its mind to the rival contentions of the parties and all the contentions of the parties were left open to be considered by the High Court on remand.

49. We have been informed that the matter after remand is being heard by another Bench.

50. However, pendency of the matter before the other Bench may not detain us from proceeding with the hearing of this bunch of writ petitions, which challenge other demands also not subject-matter of earlier petitions. We draw support from the latest judgment of the Apex Court in the case of P. Sudhakar Rao and Others Vs. U. Govinda Rao and Others, , wherein it has been held that pendency of similar matter before a larger Bench of the Apex Court would not preclude the Court from considering the matter on merits.

51. Petitioners challenge the aforesaid demands on the ground that so far as the development fee (both external and external) is concerned, the same can be levied only by framing rules u/s 54 of Act, 1973, in view of the specific language of Section 15(2-A) of Act, 1973. Similarly, the city development fee and land use conversion charges can be levied by framing Rules in view of Section 38A of Act, 1973. For the purpose reference is made to the meaning of word "prescribed" as contained u/s 4(33-A) of the U.P. General Clauses Act, 1904 as well as upon the Division Bench Judgments of this Court in the case of Virendra Kumar Tyagi Vs. Ghaziabad Development Authority and Others, ; Dr. Umesh Chandra Maheshwari v. Mathura/Vrindavan Development Authority and another, (2010) 4 ADJ 368 (DB); Pradeep Kumar Garg v. State of U.P. Another's, Civil Misc. Writ Petition No. 48415 of 2007 decided on 4th February, 2010, Kishore Bandhu Pvt. v. State of U.P., Civil Misc. Writ Petition No. 23793 of 2010 decided on 25th May, 2011.

52. Reference has also been made to the latest judgment of the Apex Court in the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Others, etc., , for the proposition that compulsory extractions of money is in the nature of cess/tax. Such realization can only be done by framing rules in accordance with the statutory provisions. It is explained that compulsory extractions of money in absence of a law would be contrary to Article 265 of the Constitution of India. In fiscal matters, it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee [Reference Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others,].

53. It is also stated that it is only the fee which is prescribed u/s 15(2-A) of Act, 1973 that can be levied/realized before sanction of the building plans u/s 14 of Act, 1973 and this flows from simple reading of 3rd proviso to Section 15 of Act, 1973. No other fee can be levied or realized as condition for the grant of sanction.

54. So far as the other fees demanded by the respondent-authority are concerned, it is stated that same is de hors the Act, 1973. It is also stated that there is no provision authorizing the Development Authority to levy sub-divisional charges or open space charges. Section 33 of Act, 1973 does not permit levy of such charges unless development is done on the land in question and further that even if Section 33 is attracted, the procedures prescribed under Sections 34 and 36 of Act, 1973 have to be followed before such levy.

55. Sri Ashwani Kumar Mishra, learned Senior Advocate on behalf of Allahabad Development Authority and Sri Ramesh Upadhyaya, learned Chief Standing Counsel on behalf of the State refute the submissions made by the petitioners. Their stand is being dealt with herein below. All other counsels for the various development authorities have only adopted the submissions of Sri Mishra and Sri Upadhyaya.

56. We may record that the form and fees for submission of the application for sanction of plan u/s 14 of Act, 1973, as contemplated by Section 15(1) of Act, 1973, has been prescribed by framing rules known as the Uttar Pradesh Urban Planning and Development (Fee on Application for Permission and on Appeal) Rules, 1983.

57. In the writ petition filed by Smt. Rekha Rani v. State of Uttar Pradesh being writ petition No. 56485 of 2013, a counter affidavit dated 7th November, 2013 has been filed on behalf of the Development Authority disclosing the statutory provisions and the legal authority in exercise of which various fees are being demanded by the Development Authority.

58. It is worthwhile to reproduce relevant paragraphs of the said short counter affidavit, which read as follows:

10. That the levy of demand under the heads of Development Fee, Stacking Charges, Water-Fee are permitted by virtue of sub-section (2-A) of Section 15 of the Act of 1973. Clause 3.1.4 of the Building Bye-Laws provides that the levy of Development Fee, Inspection Fee, Betterment Fee, Stacking Fee, etc. would be on the basis of applicable Government orders/decisions of the Respondent Authority.

11. That so far challenge made to the demand note in respect of sub-division charges are concerned, it is submitted that under the Building Bye-Laws, specific provisions have been made for leaving open spaces for various purposes in case of sub-division for the use of residents themselves. This open space under Clause 2.2.1 of the Building Bye-Laws is to the extent of 15% of the total sub-divided area for residential user. In case layout would have been got approved, then,

such area was mandatorily required to be left open and as, in the present case, it has not been done and 15% area is not available for being used as open space; consequently the Respondent Authority had no option but to proceed for compounding of such violation.

12. That at this juncture, it is clarified that in cases, where sub-division has been resorted to without sanctioned layout but provisions exist in the form of roads and other community services and open spaces as per building bye-laws then the compounding is levied under Item-10 of the Schedule attached with the Compounding Rules, levying charges which is to the extent of 1% of the total saleable area.

17. That under the Compounding Bye-Laws, no construction in park or in areas earmarked for parking is compoundable by virtue of Clauses-3.2.1, 3.2.6, 3.2.13 etc. of the Compounding Bye-Laws.

18. That so far as levy of various fees as precondition for sanction of the map other than sub-division is concerned, the same is being levied strictly in accordance with law.

19. That the very of Stacking Fee is on the basis of the Government Order issued by the State Government u/s 41(1) of the Act of 1973 dated 6.8.2004, a copy whereof is enclosed herewith and is marked as Annexure. SCA-5 to this Short Counter affidavit. Similarly, for the Inspection Charges also, a Government Order had been issued on 22.1.1998, which are charges levied essentially for the purposes of carrying out inspection, for which jurisdiction exists with the Respondent Authority under various provisions of this Act of 1973 including Section 25 thereof.

20. That so far as levy of Water-Fee is concerned, the amount received by the Respondent Authority under this head gets transferred to the Jal Sansthan, Allahabad (Respondent No. 4) and the rate of levy has been fixed pursuant to the decision of the Respondent Authority in its Board meeting dated 15.3.1996, a copy whereof is enclosed herewith and is marked as Annexure. SCA-6 to this Short Counter Affidavit.

21. That so far as levy of Permit Fee for submission of Plan is concerned, the same is being charged by the Respondent Authority in accordance with law. The relevant decision of the Respondent Authority taken in this regard pursuant to 1983 rules contained in the Board meeting dated 28.2.1994 vide Agenda No. 12 and Resolution No. 781 is enclosed herewith and is marked as Annexure. SCA-7 to this Short Counter Affidavit.

22. That the demand for levying of the external Development Fee from the petitioner has been raised on the basis of the computation arrived at by the Development Authority in its 105th Board meeting dated 22.12.2011, whereby previous decision of the Respondent Authority contained in the Board meeting dated 5.4.2008 has been revised. Copies of the agenda and resolution/decision

of the Respondent Authority in its Board meeting dated 22.12.2011 are enclosed herewith and is marked collectively as Annexure. SCA-8 to this Short Counter Affidavit. This decision of the Respondent Authority is clearly referable to Clause 3.1.4 of the Bye-Laws.

23. That even otherwise, for the purpose of determination of the Development charges, the State Government had previously issued a draft guidelines in February, 2008, which was circulated to all the Development Authorities by the Department of Housing. The State Government has also circulated draft rules known as "Uttar Pradesh Planned Development (Assessment, Levy & Collection of Development Fee) Rules, 2012" to all the Development Authorities vide letter of the State Government dated 31.8.2012. Copies of the draft guidelines of the State Government which was received by the Respondent Authority on 15.2.2008 as well as the draft rules circulated vide letter of the State Government dated 31.8.2012 are enclosed herewith and are marked as Annexure SCA-9 to this Short Counter Affidavit.

24. That so far as the rate prescribed in its draft rules is concerned, the Respondent Authority has not disagreed with it. The draft rule is attaining its finalization as per law. However, the charges determined by the Respondent Authority are lesser than the charges prescribed under the draft rules circulated by the State Government.

59. It is worthwhile to mention that the draft rules known as "Uttar Pradesh Planned Development (Assessment, Levy & Collection of Development Fee) Rules, 2012", which have been referred to in the aforesaid paragraphs, do record that the same have been framed in exercise of powers u/s 15(2-A) of Act, 1973.

60. So far as the State of U.P. is concerned, the Principal Secretary, Housing & Urban Planning, Government of U.P. Lucknow has filed his affidavit dated 25th November, 2013 disclosing the source of power to levy the said fees and new set of draft rules framed by the State Government under Act, 1973 have been brought on record.

61. On reading of the draft rules, we find that for levy and collection of Development Fee, draft rules, 2013 have been framed in exercise of powers under 15(2-A) of Act, 1973 read with Section 55 of Act, 1973. For assessment levy and collection of City Development Charge draft rules have been framed in exercise of powers u/s 55(2)(c) read with Section 38-A(2) of Act, 1973. For Assessment Levy and Collection of Land Conversion Charge draft rules have been framed in exercise of powers u/s 38-A(1) read with Section 55 of Act, 1973. For Assessment, Levy and Collection of Water Fees draft rules have been framed in exercise of powers u/s 15(2-A) of Act, 1973 read with Section 55 of Act, 1973. For Assessment, Levy and Collection of Stacking Fees draft rules have been framed in exercise of powers u/s 15(2-A) read with Section 55 of Act, 1973, for Assessment, Levy and Collection of Mutation Charges draft rules have been framed under 15(2-A) read with Section 55 of Act, 1973. A copy of all these draft

rules has been enclosed alongwith affidavit filed by the Principal Secretary, Housing & Urban Planning, Government of U.P. Lucknow dated 25th November, 2013.

62. It is, therefore, clear from the stand of the State-respondent as well as of the Development Authority that so far as the development fee, water fee, mutation charges, stacking fee are concerned, power flow from Section 15(2-A) of Act, 1973, while the power to levy and collection of city development charges and land use conversion charge flows from Section 38-A of Act, 1973.

63. It is admitted that these draft rules of 2013 have been framed and that comments have been invited from the other departments of the State including the Nagar Vikas, Finance, Planning, Law etc. and the matter is to be placed before the Cabinet soon.

64. From a simple reading of Section 15(2-A) of Act, 1973, it is apparent that the development authority is entitled to levy (a) development fee, (b) mutation fee, (c) stacking fee, and (d) water fee in such manner and on such rates as may be prescribed. Similarly from reading of Section 35 with Section 36 of Act, 1973, it is clear that betterment charges can be levied only after affording opportunity of hearing to the person concerned. From reading of Section 38-A of Act, 1973, it is clear that Land Use Conversion Charges and City Development Charges can be levied at such rates, as may be prescribed.

65. Section 15(2-A) of Act, 1973 has been considered by a Division Bench of this Court in the case of Virendra Kumar Tyagi Vs. Ghaziabad Development Authority and Others, . The Division Bench of this Court after taking note of Section 4(33-A) of the U.P. General Clauses Act 1904 has specifically opined that from the language of Section 15(2-A) of the Act, 1973. It is clear that rate of mutation has to be prescribed and the word "prescribed" means prescribed by Rules under the Act. This prescription by a rule flows from the provisions of Section 4(33-A) of the U.P. General Clauses Act, 1904 read with Section 55 of the Act, 1973. Since such prescription of the mutation fee had not been done by framing rules, the Division Bench went on to hold the demand of mutation fee was wholly illegal and without authority of law.

66. The relevant portions of the judgment is being quoted herein above:

The word "prescribed" has to be done by making Rules in accordance with the provisions of Section 4(33A) of the U.P. General Clauses Act, 1904 read with Section 55 of the Act.

18. In view of the foregoing discussions we are of the considered opinion that as the rate of mutation charges have not been prescribed by any Rules framed u/s 55(1) of the Act as required by the provisions of Section 4(33A) of the U.P. General Clauses Act, 1904, the demand of mutation charges by means of letter dated 20th August, 1999, is wholly illegal and without authority of law. The said demand is liable to be and is hereby quashed.

67. The Court has been informed by Sri Ashwani Mishra, Senior Advocate on behalf of Allahabad Development Authority that a Civil Appeal being Civil Appeal No. 5454 of 2007 was filed by the Ghaziabad Development Authority against the said judgment of the Division Bench of this Court, before the Apex Court. The Civil Appeal was dismissed on 11.8.2011.

68. What is true in respect of the demand/levy of mutation charges provided for u/s 15(2-A) is equally true in respect of levy and demand of development fees, stacking fees and water fees. These fees are also provided for u/s 15(2-A) of the Act, 1973. Further since the land conversion charges and city development charges u/s 38-A of Act, 1973 are to be levied at the rates prescribed. The same principle of law will apply.

69. Reference may be had to para 14 of the judgment of the Division Bench of this Court in the case of Umesh Chandra Maheshwariv. Mathura/Vrindavan Development Authority, 2010(4) ADJ 368 wherein it has been explained that "betterment charges under Sections 35 and/or Section 36 of the Act, 1973 are different vis-?-vis the development fee" prescribed u/s 15(2)(a) of the Act.

70. It is needless to emphasize that the betterment charges, city development charges and land conversion charges as provided for u/s 35/36 or u/s 38-A of the Act, 1973 respectively, have a different meaning under the Act itself, vis-?-vis the development fee chargeable u/s 15(2-A) of the Act, 1973.

71. We may also notice that under the third proviso to sub-section 3 of Section 15(2-A), a right has been conferred upon the development authority to demand the fee as provided for u/s 15(2-A) alone before granting permission and not in respect of other fees provided for under Act, 1973.

72. From the affidavit of the Secretary dated 24.11.2013, it is admitted that the steps for framing rules u/s 15(2-A) and Section 38-A are being taken by the State Government. Draft rules have been prepared by a Committee of five Vice-Chairmen and a period of 25 days has been prayed for notifying the rules (reference paragraphs 6 and 7 of the affidavit).

73. It is therefore admitted on the record that rules as contemplated by Section 15(2-A) and Section 38-A of Act, 1973 have not been framed by the State Government so as to entitle the Development Authority to levy/collect the development fees, mutation charges, stacking fees and water fees till date.

74. Counsel for the Development Authority and the learned Chief Standing Counsel have placed reliance upon the judgment of the Apex Court in the case of Jantia Hill Truck Owners Association Vs. Shailang Area Coal Dealer and Truck Owner Association and Others, , for the proposition that the State has the competence to make laws in respect of collection of fees on subjects provided under List II of the Seventh Schedule of the Constitution of India as is evident from Entry 66, If the State itself carries on any business actually, it is entitled to law down the norms therefore as well as for the proposition that even the draft

rules may be followed where no rules in accordance with the statutory provisions have been made. (Reference paragraph Nos. 27 and 36 of the judgment).

75. We must also take note of the contention which has been raised by Sri Ashwani Mishra and Sri Ramesh Upadhyay based on the judgment of the Apex Court in the case of Accountant General, M.P. v. S.K. Dubey and another, 2012 (4) SCC 578, specifically paragraphs 34 to 36 which are being quoted here under:

34. The statutory provision contained in Section 16(2) is quite clear. It provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. The term "member" includes the President of the State Commission. That pension can be made a condition of service is beyond any question.

35. What is the meaning of the expression, "as may be prescribed by the State Government" occurring in Section 16(2)?

36. In my opinion, the expression "as may be prescribed by the State Government" in Section 16(2) has to be read as prescribed by the rules framed by the State Government, if any. This is the plain meaning of the above expression. If Parliament intended that salary or honorarium and other allowances and other terms and conditions of service of the President and the Members of the State Commission have to be provided in the rules framed by the State Government in exercise of its powers u/s 30(2) and in no other manner; the provision in Section 16(2) would have read, "the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the Members of the State Commission shall only be in accordance with the rules framed by the State Government". The words "shall be such" followed by the expression "as may be prescribed" clearly indicate the legislative intent of "may" being directory and the expression "as may be prescribed" to mean "if any". The construction that I have put to the expression "as may be prescribed" gets support from the decisions of this Court in Surinder Singh v. Central Government (supra) and Orissa State (Prevention & Control of Pollution) Board.

76. It is their case that "as may be prescribed" used in Section 15(2-A) and Section 38-A of Act, 1973, may be given a similar meaning as has been provided for under Paragraph 36 of the aforesaid judgment. They further explain that the power of the State Government to issue Government Orders providing for levy of mutation charges, stacking fees, development fees, and water fees flows from Section 41 of the Uttar Pradesh Urban Planning & Development Act, and Article 162 of the Constitution of India which provides for the executive powers of the State.

The contention raised on behalf of the State Development Authority as aforesaid does not appeal to us for the following reasons.

77. From a simple reading of Section 15(2-A) and Section 38-A of Act, 1973, as

quoted above, it is apparent that the entitlement of the development authority to levy the fees, as mentioned in Section 15(2-A) and Section 38-A of Act, 1973 flows from the said Sections. The Section itself contemplates that the manner and the rates of the fees to be so paid have to be prescribed. The word "prescribed" takes its meaning from Section 4(33-A) of U.P. General Clauses Act which aspect of the matter has already been dealt with by the Division Bench in the case of Virendra Kumar Tyagi by a reasoned order. The Apex Court found no infirmity in the judgment of the High Court.

Paragraph 36 of the judgment of the Apex Court in the case of Accountant General, State of Madhya Pradesh (supra) only records the opinion of one of the Hon"ble Judges of the Apex Court wherein the Hon"ble Judge had placed reliance upon the judgment of the Apex Court in the case of Surinder Singh Vs. Central Government and Others, and The State of Tripura and Another Vs. Roopchand Das and Others and Sudhir Debnath and Others, .

78. The Division Bench of this Court in Virendra Kumar Tyagi (supra), in paragraph 17, had taken note of the judgment of the Apex Court, in the case of Orissa State (Prevention & Control of Pollution) Board (supra), and had distinguished the same having regard to the language of Section 15(2A) of the Act. The Division Bench has held that the aforesaid decision of the Apex Court is not applicable in the facts and circumstances of the case as the language of Section 15(2A) of the Act is very clear.

79. We may also refer to the judgment of the Apex Court in the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Others, etc., , with regard to the issue as to whether development fee can be levied even when rules have not been framed. In paragraph- 9 of the judgment, the contention raised on behalf of the appellant had been taken note of. The reply to the said contention of the contesting respondents No. 4 and 5 has been noticed in paragraphs 10(iv) and 11(v) respectively. Rejoinder to the same by the appellant is recorded in para 12(iii).

80. It is worthwhile to reproduce paragraphs No. 9(i), 10(iv), 11(v), 12(iii) as well as Section 22-A of the Act in question before the Apex Court as noticed on page 377 of the said judgment:

Contentions on behalf of the appellants

9. Mr. Fali S. Nariman, learned Senior Counsel, leading the arguments on behalf of the appellants, made these submissions;

(i) The conclusion of the High Court that the power u/s 22-A to levy and collect the development fees from the embarking passengers can be exercised without the rules, is erroneous because the language of Section 22-A of the 1994 Act prior to its amendment by the 2008 Act makes it clear that development fees could be levied and collected from the embarking passengers at the airport "at the rate as may be prescribed" and the fees so collected are to be credited to the

Airports Authority and are to be regulated and utilised "in the prescribed manner". Unless, therefore, the statutory rules are made prescribing the rate at which such fees are to be collected and prescribing the regulation and manner of the utilisation of development fees, the power u/s 22-A cannot be exercised.

....

Reply on behalf of the Union of India

10. Mr. Gopal Subramaniam, learned Solicitor General appearing for the Union of India, made these submissions:

....

(iv) Though Section 22-A of the 1994 Act, before its amendment by the 2008 Act provided that for levy of development fees "at the rate as may be prescribed" and for regulation and utilisation of the development fees "in the prescribed manner" the absence of the rules prescribing the rate of development fees or the manner of regulation and utilisation of development fees will not render Section 22-A ineffective. The legal proposition that absence of rules and regulations cannot negate the power conferred on an authority by the legislature is settled by the decision of this Court in *Orissa State (Prevention & Control of Pollution) Board v. Orient Paper Mills*; *U.P. SEB v. City Board, Mussoorie*, *Kerala SEB v. S.N. Gouinda Prabhu & Bros.*; *Surinder Singh v. Central Government and Mysore SRTC v. Gopinath Gundachar Char.*

....

Reply on behalf of MIAL and DIAL

11. Mr. Harish N. Salve, learned Senior Counsel, and Dr. Abhishek Singhvi, learned Senior Counsel, appeared for MIAL and DIAL and made these submissions:

....

(v) Rules prescribing the rate of development fees and regulation and the manner in which the development fees will be utilised as provided in Section 22-A of the 1994 Act cannot curtail the power to levy and collect development fees u/s 22-A of the 1994 Act.... Since the power to collect the development fee is already available to the Airport Authority or its lessees as part of its power to collect charges for the facilities, absence of a rule does not negate the power. The rule u/s 22-A was to be made not for purposes of conferring the power but to regulate the rate of development fees and manner of utilisation of development fee as a check on such power.

....

Rejoinder on behalf of the appellants

12. In the rejoinder, Mr. Nariman made these submissions:

....

(iii) The judgment relied on by the respondents in support of their contention that non-framing of rules do not negate the power to levy development fees u/s 22-A of the 1994 Act have been rendered by this Court in the context of enactments which are not in pari materia with Section 22-A of the 1994 Act.

....

Section 22-A. Power of Authority to levy development fees at airports.--The Authority may, after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport, the development fees at the rate as may be prescribed, and such fees shall be credited to the Authority and shall be regulated and utilised in the prescribed manner, for the purposes of --

(a) funding or financing the costs of up-gradation, expansion or development of the airport at which the fee is collected; or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or

(c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

81. The conclusion arrived at by the Apex Court after considering the rival contentions has been stated in paragraphs No. 22, 23, 24, 25, 26 and 27 of the judgment which reads as follows:

22. The nature of the levy u/s 22-A of the 2004 Act, in our considered opinion, is not charges or any other consideration for services for the facilities provided by the Airports Authority. This Court has held in *Vijalashmi Rice Mill v. CTO* that a cess is a tax which generates revenue which is utilised for a specific purpose. The levy u/s 22-A though described as fees is really in the nature of a cess or a tax for generating revenue for the specific purposes mentioned in clauses (a), (b) and (c) of Section 22-a.

23. Once we hold that the development fees levied u/s 22-A is really a cess or a tax for a special purposes, Article 265 of the Constitution which provides that no tax can be levied or collected except by authority of law gets attracted and the decisions of this Court starting from *Port of Madras v. Aminchand Pyarelal*, cited on behalf of the Union of India and *DIAL* and *MIAL* on the charges or tariff levied by a service or facility provided are of no assistance in interpreting Section 22-A. It is a settled principle of statutory interpretation that any compulsory exaction of money by the Government such as a tax or a cess has to be strictly in accordance with law and for these reasons a taxing statute has to be strictly

construed.

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 noting 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."

25. For the conclusion, we are supported by the Constitution Bench judgment of this Court in Mohd. Hussain Gulam Mohammad v. State of Bombay. In that case, the Court found that Section 11 of the Bombay Agricultural Produce Markets Act, 1939 provided that the Market Committee may levy market fees subject to the maxima as prescribed and the Court held that unless the State Government fixes the maxima by rule, it is not open to the Committee to fix any fees at all. We are also supported by the decision of a three-Judges Bench of this Court which held in Bhrangadhra Chemical Works Ltd. v. State of Gujarat that the mandatory provision in Section 60(a)(ii) of the Bombay Municipalities Act, 1901 requiring framing of rule for imposition of tax not having been complied with, the imposition of tax was illegal.

26. In Principles of Statutory Interpretation, 12th Edn., at p. 813, Justice G.P. Singh states:

...There are three components of a tax statute viz. Subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there would be no tax in law till the defect is removed by the legislature.

27. Thus, the rate at which the tax is to be levied is an essential component of a taxing provision and no tax can be levied until the rate is fixed in accordance with the tax provision. We have, therefore, no doubt in our mind that until the rate of development fees was prescribed by the rules, as provided in Section 22-A of the 1994 Act, development fees could not be levied on the embarking passengers at the two major airports.

82. The Apex Court in the said case had taken note of the judgments in the case of U.P.S.E.B. v. City Board, Mussoorie as well as to the judgment in the case of the Orissa State (Prevention & Control of Pollution) Board (supra). A distinction has been drawn in the matter of prescription of rates for compulsory exaction of money in the matter which are to be decided by the rules.

The judgment in the case of Accountant General, State of Madhya Pradesh (supra) only follows what had been said in case of Orissa State (Prevention & Control of Pollution) Board (supra).

83. In our humble opinion, the facts of the cases in hand are more akin to the facts of the case in the case of Consumer Online Foundation v. Union of India.

84. The Apex Court in the case of Association of Management of Private Colleges Vs. All India Council for Technical Education and Others, has held that starting from the case of Babu Verghese v. Bar Council of Kerala it has been consistently held that if the statute prescribes a particular procedure to do an act in a particular way, the act must be done in that manner or not at all. Relevant paragraph 67 of the judgment is being quoted herein below:

67. The position of law is well settled by this Court that if the statute prescribes a particular procedure to do an act in a particular way, that act must be done in that manner, otherwise it is not at all done. In Babu Verghese v. Bar Council of Kerala after referring to this Court's earlier decisions and Privy Council and Chancellor's Court, it was held as under:

31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-Judge Bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case 13 was again upheld. This rule has since been applied to the exercise of jurisdiction by the Courts and has also been recognised as a salutary principle of administrative law.

In view of the abovesaid decision, not placing the amended Regulations on the floor of the Houses of Parliament as required u/s 24 of the AICHE Act vitiates the amended Regulations in law and hence the submissions made on behalf of the appellants in this regard deserve to be accepted, Accordingly, Points 47.4 and 47.5 are answered in favour of the appellants.

85. In view of the aforesaid settled legal provisions as also in view of the fact that the State Government for years has not chosen to frame any rules u/s 15(2-A) or Section 38-A of Act, 1973, we have no hesitation to hold that the Development Authority has no competence to levy or realise any development fee, mutation charges, stacking fees and water charges etc. which are required to be prescribed u/s 15(2A) of the 1973 Act as well as city development charges and land use conversion charges, as are to be prescribed u/s 38-A of Act, 1973.

86. For the aforesaid reasons, the demand of development fee (both external and internal), land use conversion charges, city development charges, are held

to be without authority of law and cannot be legally sustained.

87. Now we may consider the challenge to Sub-Division Charges/Compounding Fee in respect of Sub-Division Charges.

88. It is the case of the petitioners that the Development Act, 1973 does not permit or authorise imposition or levy of any such sub-division charges. Further in the absence of any statutory provision prescribing for the quantum and rates for such levy, the demand in that regard is illegal.

89. Learned Standing Counsel for the State as well as the learned counsel for the Development Authorities were directed to place the statutory provisions where-under such fee has been levied and is being demanded.

90. On behalf of the Allahabad Development Authority, reference has been made to the Building Bye-Laws, it has been explained to the Court that if a bigger plot is to be divided into smaller plots, than a lay-out plan has to be sanctioned which would require 15% of the total area of the bigger plot left open. In cases, where sub-division into smaller plots is done without a lay-out plan being sanctioned and if a person, after purchasing such subdivided plot, approaches the ADA for sanction of map for constructions over the subdivided plot, then the Development Authority having regard to the provisions contained in clause 2.2 of the Building Bye-laws, will determine the total area of the open 15% land, which will fall in the share of the person claiming sanction of map for construction over the sub-divided plot and if open space for the purpose is available, the Allahabad Development Authority levies sub-division charges. If the land for open space is not available, then the Development Authority levies sub-division compounding fee at the rate notified under the compounding bye-laws of 2009 subject to the conditions prescribed thereunder.

91. The crux of the matter is that the Development Authority, in order to give benefits to the builders who do not intend to leave the required land for open area, as prescribed under the Building Bye-Laws to the extent of 15% of the total plot area as provided, are given an option to deposit money at twice the rate for the area of the land, which should leave as open area under the building bye-laws 2.2.

92. We find that the money which is being demanded towards Sub-Division charges and compounding fee for sub-division charges is not provided for under the Act. If the charges are referable to Section 38-A of Act, 1973, then as already held above, the rates have to be prescribed by Rules. So far as the compounding fee is concerned, we further hold that it is, in fact, a substitute in terms of money for the space as required under the Building Bye-Laws to be left open, being permitted to be constructed upon.

93. We are of the considered opinion that such a provision is per se arbitrary and illegal. It has the effect of diluting the very purpose of planned land development. Open areas are to be left so that a residential locality does not

become a cluster of big and small houses. There is sufficient open space, so that fresh air and sun light may not be adversely affected, there is sufficient space for movement of vehicles, their parking etc. We, therefore, have no hesitation to record that the provision under the Building Bye-Laws for 15% of the total area of the bigger plot being left for open space has an wholesome object, it is essentially a basic factor for planned land development. It cannot be diluted by charging money in lieu of open space as compounding fee or Sub-Division charges. The Development Authorities cannot be permitted to extract money for and in lieu of the area, which is required to be left as open space under the Building Bye-Laws.

94. In our opinion, the money cannot be a substitute for open area. The Development Authorities cannot compromise in the matter of open area which is necessarily required to be left open in a bigger plot under the Building Regulations in any circumstance whatsoever.

95. We may also record that the open space or areas which are required to be used for park, tot-lot or play ground etc. cannot be converted into constructed area and therefore, no money can be charged in the garb of diluting the requirement of such open areas. In the residential colonies required areas of land must be earmarked for tot-lot, park, play ground, parking, internal roads etc. Therefore, the Compounding bye-laws of 2009, insofar as they permit realisation of money in lieu of the land which is required to be left open for park, playground, parking, internal roads etc. cannot be levied. It is the duty of the Development Authority to ensure that required area is left open in all constructions.

96. Therefore, we hold that the Development Authority cannot levy any Sub-Division charge or compounding fee to set off the area which is required to be left open under the building bye-laws.

97. We may record that Section 32 of Act, 1973 provides for compounding of offences but the issue of compounding of an offence arises only when the offence is committed and not otherwise. Further there are certain offences which cannot be compounded like constructions raised over Nallas/Open drains etc. Violation of open space area is also one such offence, which cannot be compounded and construction to that extent must be demolished besides other action which may be taken under law.

98. Learned counsel for the Gorakhpur Development Authority has tried to justify the levy of Impact Fee, with reference to the powers vested u/s 38-A of Act, 1973, which talks of City Development Charges. The levy and collection of the said charges can only be at such rates, as may be prescribed. The prescription can be by statutory rules only, as held above. Therefore, in absence of rules having been framed, the demand of Impact Fee u/s 38-A of Act, 1973 cannot be legally sustained.

99. So far as the issue of park fee is concerned, we are informed that such fee is

being demanded by the Gorakhpur and Bareilly Development Authority with reference to the Government order dated 15.10.2012. It is contended that the Development Act, 1973 does not contemplate levy of any such charge and, therefore, regulations framed by the Development Authorities are wholly without authority of law inasmuch as the Development Authority cannot demand fee not provided for under the Act.

100. We may further record that a power u/s 41 of the 1973 Act has been conferred on the State only for the purpose of issuing directions to the Development Authorities, Chairman and Vice Chairman for necessary implementation of the Act. The said powers cannot be extended to provide for levy a fee not provided for under the Act 1973.

101. It has also been contended that under the Zoning regulations, park fee can be levied in respect of the colonies which are constructed by the Development Authority or which are constructed for it by private builders. The petitioners are residing in colonies which have been constructed by private builders for the residential purposes and not for the Development Authority. Therefore, under the zone regulations also, no park fee can be demanded from the petitioners.

102. The levy of labour cess, supervision charges/inspection charges is questioned on the ground that there is no power to levy supervision charges/inspection fee or to levy of the labour cess. The Act, 1973 does not confer any such power to realise any such cess or fee. Learned counsel for the petitioners vehemently contended that the fee/cess in the nature of compulsory extraction of money has to be specifically provided for under the Statute. There is no power in the Development Authority/State Government to levy a fee/cess over and above, what has been provided for under the Act. The fee and cess are in the nature of compulsory extraction of money has to be provided by law and there can be no intendment or implied power for the purpose.

103. We further find that U.P. (Regulation of Building Operations) Regulations/Directions, 1960 would apply only when an agreement is entered into with the local body concerned for the land and for provision of other amenities. Admittedly, the petitioners have not entered into any agreement with the local body.

104. We may further record that the Development Authority has no competence to make any amendments in the U.P. (Regulation of Building Operations) Regulations/Directions, 1960 and any resolution of Development Authority in that regard would be wholly without jurisdiction.

105. Learned counsel for the Development Authority could not disclose the source of power to levy any such cess under the Act, 1973. Reference to the general power of inspection u/s 25 of Act, 1973 for enforcing the provisions of Act, 1973 cannot be read to suggest that the Development Authority can levy or cess a fee, which is in fact compulsory extraction of money.

106. Learned counsel for the petitioners submitted that the demand of bank guarantee for the price of the land and the cost of construction in respect of houses to be built for economically weaker Sections of society or for persons belonging to lower income group is also arbitrary. According to the petitioners, such constructions cannot be forced to be carried out nor bank guarantee can be demanded to enforce such constructions.

107. So far as the demand of a bank guarantee in the matter of construction of houses for economically weaker Sections or for the persons belonging to the lower income group is concerned, we may record that demand of bank guarantee in advance on the presumption that such construction will not be raised as per the directions of the State Government, appears to be arbitrary. Demand of bank guarantee in advance is totally uncalled for. If the building plan has been sanctioned including construction of certain number of houses for members of lower income group or economically weaker Sections of society and if such constructions are not carried out, the Development Authority can always proceed against the person in whose favour the plan was sanctioned and can even proceed to demolish the construction raised de hors the plan.

108. We hold that the demand of bank guarantee in advance is unsustainable and even otherwise not contemplated under any of the statutory provisions.

109. We record that the issue qua competence of the State Government to pass a direction for certain percentage of the LIG and EWS houses to be constructed by a developer is not being examined in these petitions and is left open to be examined in an appropriate case.

110. We are of the opinion that the development authority is justified in insisting upon rain water harvesting system being installed by a developer in residential colonies, which are to be constructed and for that purpose necessary conditions can be imposed at the time of sanction of the map/lay out. It should be ensured that such conditions incorporated in the sanctioned map/lay out are actually carried out by the developer. But the Development Authority cannot ask for a bank guarantee in advance on the mere presumption that otherwise the developer would not provide for rain water harvesting. If the Development Authority at any point of time feels that the conditions mentioned in the sanctioned map qua provision for rain water harvesting are not being carried out by the developer, it can always seal the construction and demolish the same for violation of the conditions mentioned in the sanctioned plan.

111. We, therefore, hold that the demand of bank guarantee in advance for the cost of rain water harvesting system to be installed in the building is uncalled for. However, we clarify that it shall be open to the development authority to take all actions as permissible under Act, 1973 without any leniency whatsoever, if the conditions mentioned in the sanctioning order are not obeyed by the developer or by the person concerned.

112. Having arrived at the aforesaid conclusion, we allow these writ petitions

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

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

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

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

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

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

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

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