

(2001) 04 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petitions No"s. 11144/93, C/W 13436-13439/90, 30409/94, 30527/94, 33689/94, 13907/95, 35884/95, 38988/95, 41725-41726/95, 1760/96, 2194-2195/96, W.P.769/96, 8111/96, 21784/96, 22311/96, 15664/97, 24186-24187/97, 27098-27104/97, 6993/98, 19134/98, 21

The Air Craft Employees Co-Operative Society Ltd.

APPELLANT

Vs

The Bangalore Development Authority and Others

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Citation : (2012) 5 KarLJ 94

Hon'ble Judges : K.R. Prasad Rao, J; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : G.V. Shantharaj and Sri. M. Sreenivas, for M/s Shetty and Hegde Associates Writ Petitions Nos. 11144/93, Sri. G.V. Shantharaj and Sri. M. Sreenivas, for M/s Shetty and Hegde Associates W.P. Nos. 13436-439/90, W.P. No. 30409/94, W.P. No. 35884/95, W.P. No. 1760//96, W.P. No. 8111/96, W.P. No. 6993/98, W.P. No. 19134/98 Sri. N.S. Sanjay Gowda, W.P. No. 33689/94, Sri. M.G. Srinivas, W.P. No. 13907/95 Sri. T.S. Amar Kumar, W.P. No. 38988/95, W.P. No. 41725-726/95, W.P. No. 769/96, W.P. No. 21704/96, W.P. No. 22311/96, W.P. No. 15664/97, W.P. No. 24186-187/97, W.P. Nos. 27098-104/97, W.P. No. 8526/99, Sri. T.S. Amar Kumar, Sri. H.B. Mahesh, HCGP Sri. T.S. Amar Kumar, W.P. No. 21973/98, for the Appellant; G. Sarangan for Sri. S.A. Nazeer, Adv Writ Petitions Nos. 11144/93, Sri. H.B. Mahesh, HCGP for R-1. Sri. Sarangan for S.A. Nazeer for R-2 and Sri. R. Guruprakash Advocate for R-3, W.P. Nos. 13436-439/90, Sri. N.S. Sanjay Gowda, Sri H.B. Mahesh, HCGP and Sri. G. Sarangan for Sri. S.A. Nazeer, W.P. No.30409/94 Sri. H.B. Mahesh, HCGP for R-1 and Sri. G. Sarangan for Sri. S.A. Nazeer, Adv for R-2 W.P. No. 33689/94, W.P. No. 21973/98 Sri. G. Sarangan for Sri. S.A. Nazeer, for R-1 and Sri. H.B. Mahesh, HCGP for R-2 W.P.No 13907/95, W.P.No. 35884/95, W.P. No. 19134/98 Sri. H.B. Mahesh, HCGP for R-1, Sri. G. Sarangan for Sri. S.A. Nazeer, for R-2 and Sri. K.T. Mohan, for R-3 W.P. No.38988/95, W.P.No.41725-726/95, W.P.No. 8526/99 Sri. G. Sarangan for Sri. S.A. Nazeer, for R-1 and Sri. H.B. Mahesh, HCGP for R-2 W.P.No.1760//96, W.P. No. 8111/96 Sri. H.B. Mahesh, HCGP for R-1, Sri. G. Sarangan for Sri. S.A. Nazeer, for R-2 and Sri. K.T. Mohan, for R-3 W.P. No. 2194-2195/96, W.P. No. 22311/96 Sri. G. Sarangan for Sri. S.A. Nazeer, for R-2, Sri. H.B. Mahesh, HCGP for R-1 and Sri. R.T. Mohan, for R-3 W.P. No. 769/96 Sri. H.B. Prakash, HCGP for R-1, Sri. G. Sarangan for S.A. Nazeer, for R-2 and Sri.

K.T. Mohan and Mrs. Veena Antin, for R3 W.P. No. 21704/96, W.P. No. 24186-187/97, W.P. No. 27098-104/97 Sri. G. Sarangan for Sri. S.A. Nazeer, for R-1 and Sri. H.B. Mahesh, HCGP for R-2 W.P. No. 15664/97, W.P. No. 6993/98, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J

1. These writ petitions involve common question of law as to the competence of the Bangalore Development Authority to impose and to make demands with reference to the Cauvery Water Supply Scheme III Stage and other matters as per the annexures to the writ petitions and as to whether the provisions of Section 32 (5th) of the Bangalore Development Authority Act, 1976 is ultravires of the Constitution being hit by Article 14 of the Constitution of India. These writ petitions are disposed of by one common judgment.

2. In writ Petitions Nos. 13436 to 134539 of 1990, the petitioners have claimed the following reliefs:

a) Declare that the respondents 1 to 3 are not competent to impose any tax or fee or collect any amount at the rate of Rs. 1.00 lakh per acre on persons or institutions or housing co-operative societies who form layout far away from the Municipal limits of Bangalore.

b) Issue an order or writ in the nature of Mandamus or any other appropriate writ, order or direction directing the respondents 1 to 3 not to collect any amount as water supply component from the fourth respondent-society or its members including the petitioners, any amount at the rate of Rs. 1.00 lakh per acre as water supply component from the fourth respondent or its members.

c) Declare that the said levy whether it be regarded as a tax, fee or any other imposts- is without authority of law and is violative of Article 265 of the Constitution of India.

d) Declare that the communication/order as per Annexure-C issued by the second respondent directing the fourth respondent to pay in all a sum of Rs. 1,07,25,000/- towards contribution for Cauvery III Stage water supply scheme as illegal and without the authority of law.

d) Issue an order or writ or direction or writ of mandamus or any other appropriate writ, direction, directing the second respondent to refund the amount already collected from the fourth respondent-society towards contribution by the fourth respondent in respect of Cauvery III Stage water supply scheme in pursuance of the letter-Annexure-C issued by the second respondent.

In Writ Petition No. 11144/1993, the petitioner has claimed the following reliefs:

a) That the demand for contribution of Rs. 2.00 Lakhs per acre towards Cauvery water supply scheme and the Ring Road surcharge at Rs. 1.00 lakh per acre, are without authority of law.

b) Issue a writ of certiorari or any other writ, order, or direction to quash Annexure-A dated 12-11-1992 made in No. BDA TPM DDE 1263/92-93 issued by the Bangalore Development Authority, Bangalore, in so far as they relate to the contribution of Rs. 2.00 lakhs per acre towards Cauvery Water Supply Scheme and Rs. 1.00 lakh per acre towards the contribution of Ring Road Surcharge, and

c) Issue such other relief/s which this Hon'ble Court may deem fit in the facts and circumstances of the case including the cost of this writ petition.

In Writ Petition No. 38988/95 and other connected writ petitions, the reliefs claimed are as under:

i) Issue a writ of certiorari or any other writ, order or direction to quash Annexure-D the demand notice No. BDA.NA.Yo.SA.U.NI (P) 3392/94-05 dated 21-2-1995. issued by the Bangalore Development Authority, Bangalore, in so far as the said notice relates to levies regarding protection and development of sites reserved for civil amenity areas, Cauvery Water Supply Project III Stage, Ring Road Surcharge, Slum clearance fee and betterment fee or tax which are items 3, 4, 5, 6 and 8 of the notice of demand.

ii) declare that the levies regarding protection and development of sites reserved for civil amenity areas, cauvery water supply project III stage, Ring road surcharge, slum clearance fee and betterment fee or tax, as contained in items. 3, 4, 5, 6 and 8 of the demand notice (Annexure-D), are without authority of law and arbitrary and therefore void.

iii) strike down Section 32(5-A) of the Bangalore Development Authority Act as offending Article 14 of the Constitution of India.

iv) pass such other order or orders as may be just and necessary in the circumstances of the case.

3. That under the orders of approval of layout plans conditional to levy and payment of amounts mentioned therein and demand notices issued in these cases, the demands have been made by the Bangalore Development Authority under the following heads:-

1. For protection and development of sites reserved for the civil amenities.
2. Towards Cauvery Water Supply III stage at the rate of Rs. 3.00 lakhs per acre.
3. Ring Road surcharge at the rate of Rs. 1.00 lakh per acre.
4. Slum clearance fee at the rate Rs. 10,000/- per acre.
5. Betterment tax or fee at the rate of Rs. 20/- per sq. meter.

6. Supervision charges and asphalating of roads charges have also been made.

4. The petitioners in these writ petitions have challenged the competence of the Bangalore Development Authority to charge and demand the amounts under the above heads.

"According to the case of the petitioners in Writ petition No. 11144/1993 and Writ Petitions No. 13436 to 13439/1990 which was amended later on the introduction of sub-section (5-A) of Section 32 of the Bangalore Development Act, 1976, the respondents made demand by communication dated 12-11-1992 and sent intimation to the petitioners that the private residential layout plans of the Co-operative societies were approved by the Bangalore Development Authority, subject to the terms or Conditions mentioned therein. The communication dated 12-11-1992 has been annexed as Annexure-A to the Writ Petition No. 11144/93 which reads as under:

The Authority in its meeting held on 31-10-1992 vide Sub. No. 454/92. resolved to approve the private layout in above cited Sy.No's to an extent of 324Ac-30Gts in favour of Air Craft Employees" Co-operative Society Limited, with certain terms and conditions.

5. One of the conditions therein is that the Society is to pay or make payment and contribution of Rs. 2.00 Lakhs per acre towards Cauvery Water Supply Schemes as per the revised rates (modified), to entrust the Society to carry out the civil portion of works under the supervision of the B.D.A. as well as to pay Ring Road surcharge as per Authority resolution.

6. In Writ Petitions No. 13436 to 13439 of 1990, the petitioners are the members of the Vijaya Bank Employees Housing Co-operative Society Limited and they claim to be the employees of the Vijaya Bank. In this case also, the society for the purpose of providing housing facilities, the lands had been acquired by the Government to the extent of an area of 111 acres and 18 guntas. It appears that the petitioners in this case had applied for the approval of the residential layout in survey numbers mentioned in Annexure-C to the writ petition and the Bangalore Development Authority issued the communication on 5-2-1990 intimating the petitioners to remit the charges to the total tune of Rs. 3,12,30,000/- under the various heads viz., Supervision charges, water Supply arrangements charges, Cauvery III Stage including prorata charges at the rate of Rs. 1.00 Lakh per acre, UGD System charges, Electricity Charges, Improvement of sites charges at the rate of Rs. 10,000/- per acre etc., as given in detail in Annexure-C to the writ petitions.

7. Similarly in Writ Petition No. 30409/1994 the Bangalore Development Authority in the matter of Wilson Garden House Building Co-operative Society issued a communication on 7-9-1994 and imposed charges towards asphalating of roads, supervision charges, Cauvery Water Supply Scheme III Stage, Ring Road surcharge, Betterment charges, Scrutiny fee and slum clearance and development tax etc., before issuing the work order and called upon the

petitioner to pay that amount to a sum of Rs. 1,05,71,543/-

Similarly the Bangalore Development Authority issued a communication to the petitioners in all the Societies calling upon them to pay Cauvery Water Supply charges as well as C.A. site development charges, Ring road charges etc., before the petitioners-societies being granted approval of their residential layout plans or work order. The petitioners have challenged such demands which has been made by the Bangalore Development Authority and the imposition of those conditions by the Bangalore Development Authority to the effect that before the layout plan is approved or sanctioned, the societies should deposit and pay the sums required under the respective items as contained in the communication addressed to the societies and subject to which the approval is made. The petitioners have prayed for the reliefs for quashing of the communications, whereunder such demands have been made and for declaration that the first respondent-Bangalore Development Authority had no jurisdiction or authority to claim the charges in respect of asphalating of roads, C.A site development charges, Cauvery Water Supply Scheme, Ring road surcharge, betterment charges, scrutiny fee, slum clearance charges etc., for approving the layout plan or for issuing the work order to the petitioners-societies. According to the petitioners' case, the respondents have no power to impose such charges or to demand the same and that there is no provision empowering the Bangalore Development Authority to impose such conditions as condition precedent to be complied with before their residential layout plans are sanctioned, nor as pre-condition to grant the work order. The petitioners have asserted that sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 which has been introduced and inserted in 1994 by Karnataka Act No.17/1994 is ultra vires and is hit by Article 14 of the Constitution of India.

8. The petitioners have also taken the plea that the area of their residential layout plans are not areas falling within the Bangalore Metropolitan Area. It has also been alleged by the petitioners that the notification issued u/s 2-C of the Bangalore Development Authority Act, 1976 is not valid notification as there is no specification of the other adjacent areas. It has also been asserted by the petitioners that the notification dated 1-3-1988 is not in consonance with the requirements of law as it does not specify the villages and the areas which have been sought to be declared and specified as part of the Bangalore Metropolitan Area. In the alternative, it has been contended that the notification dated 1-3-1988 nowhere specifies the villages, nor schedules referred to in the notification have been published and annexed with the notification dated 1-3-1988. In the alternative, it has also been asserted and stated that even the villages on which land the subject matter of the residential layout plans of the respective societies or the petitioners, or of many of the petitioners-societies falls or lies do not schedule to the notification in No. HUD 496 TTP 83 dated 13th March 1984 issued under sub-section (1) of Section 4A of the Karnataka Town and Country Planning Act, 1961. The case of the petitioners is that firstly the notification dated 13-3-1984 is one issued under the Karnataka Town and

Country Planning Act, 1961 and is not under Bangalore Development Authority Act, 1976 and so unless the villages mentioned in the Schedule, to the notification dated 13-3-1984 were notified by making and publishing the said schedule as schedule to the notification dated 1-3-1988, the villages mentioned therein i.e., in schedule to the notification dated 13-3-1984 could not and should not be deemed or considered to be part of Bangalore Metropolitan Area. The learned Counsel further argued that even otherwise as well in the schedules to the notification under the Karnataka Town and Country Planning Act as well, the villages where the lands in question are situate with respect to which residential layout plans have been submitted do not find a place in the schedule. The main contention of the petitioners in all these cases is that firstly the Bangalore Development Authority has no jurisdiction to issue the endorsement/communication making the demand or requiring the petitioners-societies to pay the sums referred to in the respective annexures or endorsements in the matter of sanction of the residential layout plans as areas of their respective layouts (sic) not form part of Bangalore Metropolitan Area, and it is their second important basic plea that the provisions of sub-section (5-A) of Section 32 of the Act as introduced by Act No. 17 of 1984 in the Bangalore Development Authority Act, 1976 is hit by Article 14 of the Constitution of India and so is ultra vires.

9. The counter affidavits have been filed in some of the writ petitions by the respondents,-but to be read as counselor affidavit in the Context of all other write petitions as well, taking the plea that the writ petitions are not maintainable and are liable to be dismissed. It has further been stated that the lands of the petitioners residential layout do fall within the local planning area of the concerned authority. Therefore, the concerned society has been liable and it has to pay layout charges in respect of Cauvery Water Supply Scheme charges, Ring road surcharge, slum clearance charges, betterment levy, scrutiny fee, supervision charges etc. It has further been stated that the charges are levied as per the Government Order/Circular and as per the decision of the Bangalore Development Authority. It was also asserted that the concerned societies are permitted to carry out the civil work under the supervision of the Bangalore Development Authority under the Act of 1976. So levy of supervision charges is based on expenditure required for development of civil works, such as formation of roads, culverts, drainages etc., and the said supervision charges are charged as per the estimate of civil work. The respondents have taken the plea that every development has to proceed only after getting necessary sanction from the Bangalore Development Authority which is a planning authority for the Bangalore Metropolitan Area and the lands in question fell within the jurisdiction of the Bangalore Development Authority. So the residential layout plans have got to be approved by the Bangalore Development Authority which is a competent authority. It was also asserted that the amounts were collected for the Cauvery Water Supply Schemes as well under other heads indicated in the endorsement issued, under the Government Order dated 12-1-1993 as well in exercise of the powers conferred under sub-section (5-A) of section 32 of the Bangalore

Development Authority Act, 1976 as introduced by Karnataka Act No. 17/1994. The respondents have asserted that the said amendment is constitutional and it does not offend any of the provisions of law or Constitution including Article 14 of the Constitution of India.

10. On behalf of the state also, it has been asserted that the provisions of sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 is not ultra vires nor discriminatory nor hit by Article 14 of the Constitution and is not unconstitutional.

11. It may be mentioned here that the facts in all the writ petitions are almost same, subject to the difference of figure of amounts that might have been claimed from a particular residential Housing Co-operative Society and the defence is almost same.

12. We have heard learned Counsels Sriyuths: Shankar Raju, T.S. Ram Chandra, M.G. Srinivas, Day Shankar, and others on behalf of the petitioners as well as Shri. G. Sarangan, learned Senior Advocate as Counsel as for respondent (sic) as well as Sri. H.B. Mahesh, learned High Court Government Pleader appearing on behalf of the State Government.

13. The following contentions have been raised on behalf of the petitioners:

On behalf of the petitioners at most in all petitions it has been urged that areas of their respective residential layout plans do not fall nor do form part of Bangalore Metropolitan Area. So the Bangalore Development Authority had no jurisdiction or authority to demand, levy and to claim various sums under distinct heads such as Cauvery Water Supply Scheme charges, Ring Road surcharge, slum clearance fee, betterment charges, Improvement of site charges, Scrutiny charges etc.,

with reference to writ petition No.13907/1995, it was asserted that the lands situate in Amruthahalli village, Yalahanka Hobli, Bangalore North Taluk have been included within the jurisdiction of the City Municipal Council, Byatarayanapura w.a.f. 22-1-1996 vide the notification issued under the Karnataka Municipalities Act, 1964 a copy of which is produced" as Annexure-J to the writ petition. Similarly the lands situate in Vibhuthipura village, K.R. Pura Hobli, Bangalore South Taluk have been included within the jurisdiction of the City Municipal Council, K.R. Puram. These lands became the part of the respective Municipal Councils area and ceased to be part of Bangalore Metropolitan Area as such the Bangalore Development Authority has no jurisdiction and authority to make demands as made by it as per endorsement of demand annexed to the writ petition. The petitioner had raised other contentions same or similar to the (sic) raised by the learned Counsels for the petitioners in the other writ petitions namely, the contention, to the effect that the provisions of sub-section (5-A) of section 32 of the Bangalore Development Authority Act, 1976 is ultra vires of the Constitution as being hit by Article 14 of the Constitution of India, on account of the fact as alleged that prima facie it confers unguided power to the authority to

demand the sums and so is hit by Article 14 of the Constitution of India.

14. On behalf of the petitioners, certain case laws have been referred in support of their contentions which will be referred at the appropriate stage.

15. On behalf of the respondents, Sri. G. Sarangan, learned Senior Advocate as well as H.A. Mahesh, learned High Court Government Pleader have contended that sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 confers power on the authority to issue demand notices and endorsements in that regard which have been issued to the petitioners and are found as annexures to the writ petitions. The learned Counsels for the respondents contended that sub-section (5-A) of section 32 of the Bangalore Development Authority Act, 1976 does not suffer from the vice by conferring arbitrary, unguided or unbridled power on the Bangalore Development Authority. It has further been contended that the purpose or object indicated in the section furnishes sufficient guidance to the authority in the matter of determining the amount to be charged or demanded from the persons seeking approval of their residential layout plans or seeking the work order. The learned Counsel contended that a reading of sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 furnishes guidance to the effect that out of the expenditure which the authority may have to incur in connection with the developmental schemes like Cauvery Water Supply Schemes, supply of electricity, formation of roads etc., the authority has to charge a portion of that expenditure from the applicants seeking approval of their residential layout plans as those expenses relate to the Schemes for providing many civic amenities the Bangalore Metropolitan Area and to the people residing in the Bangalore Metropolitan Area. That as such the proportion of which amount to be charged and required to be deposited out of the total expenditure has to bear the rates proportion with reference to the benefits or amenities being available and being availed by the persons seeking sanction of the layout plans qua the total expenditure on those works or schemes of Water Supply, electricity charges, formation of roads and other amenities qua the benefits are to become available to the people at large residing in the Bangalore Metropolitan Area, The learned Counsel contended that the schemes are meant to provide facilities of water supply, formation of roads, supply of electricity charges etc., to the persons residing within the Bangalore Metropolitan Area. Therefore, the portion of those expenses or sums which the applicants may be required to deposit or to bear has to bear the same proportion to the total expenditure of the Schemes as the benefit and amenities enjoyed or to be enjoyed by the persons concerned bear with the amenities enjoyed by the people of the entire Bangalore Metropolitan Area. Therefore, the learned Senior Counsel submitted that there is sufficient guidelines to determine as to what portion of the said expenditure is to be charged before sanctioning the residential layout plans. Shri. G. Sarangan, the learned Senior Counsel as well as Shri. H.B. Mahesh, the learned High Court Government Pleader argued that as such the provisions need not held to be suffering from arbitrariness, nor it be held to be suffering from the (sic) of

Conferment of unbridle and arbitrary powers. It is only if there is any arbitrary exercise of power by authority then the action or order of authority may be challenged and not the provision of law i.e., Section 32 (5-A) of the Bangalore Development Authority Act, 1976.

16. We have applied our mind to the contentions advanced by the learned Counsels appearing for the parties.

17. As regards the first contention, i.e., relating to the notification dated 1-3-1988 (Notification No. HUD 167 MNJ 87, that this notification purporting to have been issued under clause (c) of Section 2 of the Bangalore Development Authority Act, 1976 is not a valid Notification specifying the villages as part of the Bangalore Metropolitan Area, as the names of the villages or the specified area have not been notified and published in the official Gazettes its is bad and cannot be deemed and considered to be making or constituting the villages in which respective residential layout plans exist, to be part of Bangalore Metropolitan Areas appears to us having no substance. So, this contention of the learned Counsel has to be rejected for the detailed reason as are mentioned and elaborated herein after.

18. It will be appropriate at this juncture to refer to Section 2(c) of the Bangalore Development Authority Act, 1976. Before we quote that section, it would be appropriate to mention the Bangalore Development Act, 1976 has been enacted to provide for the establishment of the Bangalore Development Authority for the development of the City of Bangalore and the areas adjacent thereto and for the matters connected therewith. This Act came into force on 20th December 1975. Section 2 of the Act is a definition clause. Section 2 deals with the definitions of the expressions used in this Act.

5.2. Definitions:- In this Act, unless the context otherwise requires:-

(a) x x x x

(b) x x x x

(bb) xxx

(c) "Bangalore Metropolitan Area" means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Karnataka Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Karnataka Act 5 of 1945) was immediately before the commencement of this Act, in force, and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify;

19. It will also be appropriate to quote the Gazette Notification dated 1-3-1988 which reads as follows:-

Housing and Urban Development Notification No. HUD 167 MNJ 87 Bangalore, dated 1st March 1988

In exercise of the powers conferred by clause (c) of Section 2 of the Bangalore Development Authority Act, 1976 (Karnataka Act 12 of 1976) the Government of Karnataka hereby specifies the villages indicated in Schedule I and within the boundaries indicated in Schedule (II) to the Notification No. HUD 496 TTP 88 dated 10th March 1984 to be the areas for the purposes of the said clause.

By order and in the name of the Governor of Karnataka.

(T. Venkataiah) Under Secretary to Government, Housing & Urban Development directorate.

20. Now the question is as to whether this Gazette notification which does not contain any schedule by itself is null and void as urged or it can be said to specify the other areas which the Government is empowered to specify to be the part of Bangalore Metropolitan Area. The expression "Specify" is not a term of art. "To specify" means to refer, to identify precisely, to state as condition or requirement as per the 21st Century Chambers Dictionary at page 1348. A perusal of the definition of Bangalore Metropolitan Area reveals that the Legislature has itself specified certain areas constituting to be part of Bangalore while defining the Bangalore Metropolitan Area. It has mentioned two categories of areas, identifying those areas by mentioning them as "the areas comprising the city of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Karnataka Act 69 of 1949)" and "the other area has been specified and mentioned as" the areas where the City of Bangalore Improvement Act, 1945 (Karnataka Act 5 of 1945) was immediately before the commencement of this Act in force" and such and such other areas adjacent to the aforesaid as the Government may from time to time by notification specify. The Identification of these areas by the Legislature itself has been made without mentioning any specific village etc., and it definitely identifies the two classes/areas referred to above. The third category of areas which may be said to be part and parcel of the Bangalore Metropolitan Area are stated as "other areas," to specify which power has been conferred on the Government. What I wish to emphasize is that the areas can be specified or identified in this manner also as in clause 3 itself. So, the third category of the areas which the Government has been empowered to specify can well be said to have been identified and specified by describing them by the expression "hereby specifies the villages indicated in the schedule 1 and within the boundaries indicated in Schedule 2 to the Notification Noshed 496 TTP 83 dated 13-3-1984 to be the areas for the purpose of the said clause" to be the areas of the Bangalore Metropolitan Area. The notification dated 13-3-1984 is a notification issued to indicated the local planning area or the planning area of the environs of Bangalore and the limits of the said planning area indicated in Schedule 2. So, here the Government specifies the areas which were specified as planning areas for the environs of Bangalore consisting of many villages specified in Schedule with their boundaries defined in the Schedule 2 to the notification of March 13th, 1984 to be the areas forming part of the Bangalore Metropolitan Area. The description is in consonance with the description given in Section 2(c)

itself of other two areas which were specified to form the part of Bangalore Metropolitan Area. Therefore, this contention of the learned Counsel for the petitioners that the Gazette notification is not in consonance with Section 2(c) of the Bangalore Development Act, 1976, in our view has got no substance. The description is complete of the areas by reference to the villages as are mentioned in Schedule 1 to the notification dated 13-3-1984 and by the boundaries of the planning environs area as per Schedule 2 to the notification dated 13-3-1984 and can very well be said to be specified and identified to form part of the Bangalore-Metropolitan Area. Both the Gazette notifications have been placed before us and we find that the Gazette notification dated 1-3-1988 read with the schedule to the notification dated 13-3-1984 appears to be in due compliance with Section 2(c) of the Act as it specified other areas which are also to be taken part of the Bangalore Metropolitan Area. So the first contention of the learned Counsel for the petitioners appears to be without substance and is rejected.

21. Another contention had been raised by the learned Counsel for the petitioners is that the particular villages relating to which the layout plans have been sent for the approval do not come within the purview of the Bangalore Metropolitan Area as some of the villages appear not to have been included in the schedules and about some there was dispute. This contention involves the investigation as to question of fact, it is better not to express any opinion on this point. That question of fact may be determined when the applicant/applicants furnishes or send his/their layout plans for the approval to the Bangalore Development Authority, then it is not open to the petitioners to raise such contention. Seek finding if necessary on the question of jurisdiction and authority of BDA to unpose such charges.

22. The other contention that had been raised by the learned Counsel for the petitioners in this regard in Writ Petition No. 13907/1995 has been to the effect that the Bangalore Development Authority had lost the territorial jurisdiction on account of the fact that the area in question has now vested in the City Municipal Council. Byatarayanapura and the City Municipal Council, Krishnaraja Puram respectively, as per the notification dated 22-1-1996. It always open and it is kept open to the petitioners to raise the question of jurisdiction before the authority concerned as and if occasion do arise and the said authority may decide this question, if and when necessary to dispose of the dispute when it is being raised before it and if really the areas in question mentioned in the petition have been taken out of the Bangalore Metropolitan Area and have been included in the City Municipal Council, Byatarayanapura or the City Municipal Council, Krishnaraja Puram and as to the effect thereof as to take out said area out of the purview of the Bangalore Metropolitan Area, then the authority may after recording a finding on that issue may pass suitable orders.

23. The foremost material question-that has been raised and which is of importance is whether sub-section (5-A) of section 32 of the Bangalore Development Authority Act, 1976 as introduced by the amending Act 17/1994

with retrospective effect from 20-6-1987 is intra vires or ultra vires of the Constitution as asserted and argued by the learned Counsel for the petitioners and whether it is hit by Article 14 of the Constitution.

24. Before we proceed to examine this question, it will be appropriate to refer to the following provisions of the Constitution. Article 265 of the Constitution of India provides and reads as under

Article 265:-

No tax shall be levied and collected except by authority of law." Law, here means the law validly enacted i.e., the law made by the competent Legislature and not otherwise ultra vires.

25. Similarly Article 300A of the Constitution of India provides and reads as under:

Art. 300-A No person shall be deprived of his property save by authority of law." The property may be movable or the immovable or in the form of money as well. By authority of law means under the law made by the competent Legislature and validly enacted and not hit by any of the provisions of the Constitution.

26. In view of the above provisions of Articles 265 and 300-A of the Constitution of India, the Bangalore Development Authority cannot levy demand, nor could recover the sums demanded vide Annexure/endorsement of demand annexed to each writ petition merely on the basis of Government Order or Circular simplicitor, nor can subject, the approval of the residential building layout plans or the work grant order to deposit of sums demanded or levied by the Bangalore Development Authority therein. Section 32 of the Bangalore Development Authority Act, 1976 deals with forming of new extensions or layouts or making new private streets. Section 32(1) provides that no person notwithstanding anything to the contrary for the time being in force shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the authority as well as or otherwise than in accordance with such conditions as the authority may specify. Sub-section (2) of Section 32 of the Act provides for making of the application with plan by the person, intending to form an extension or layout or intending to make a new street and what are particulars to be shown or mentioned therein has been indicated in this sub-section. Sub-section (3) of Section 32 of the Act, provides that within six months of the receipt of any application under-section (2) of Section 32, the authority shall sanction the forming of extension or layout or making of new private street on such conditions as it may think fit or that it shall itself allow the application or may ask for further information regarding that. Sub-section (5) and sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 provide and read as under:-

S.32(5) The authority may require the applicant to deposit, before sanctioning the application the sums necessary for meeting the expenditure for making

roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as such applicant may be called upon by the authority, provided the applicant also agrees to transfer the ownership of the roads drains, water supply mains and open spaces laid out by him to the authority permanently without claiming any compensation therefore.

S.32(5-A) Notwithstanding anything contained in this Act, the authority may require the applicant to deposit before sanctioning the application such further sums in addition to the sums referred to in sub-section (5), to meet such portion of the expenditure as the authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities within the Bangalore Metropolitan Area.

Sub-section (6) of Section 32 of the Act, indicates the circumstances and conditions in which only the authority may refuse to sanction the layout plan and when the conditions have been specified in which or the ground on which sanction can be refused by the Bangalore Development Authority it clearly follows by necessary implication the approval or sanction to Layout plans cannot be refused on any ground otherwise than those enumerated in sub-section (6). Sub-section (7) of Section 32 of the Act, again provides and reads that no person shall form a layout or make any new private street without the sanction of or otherwise than in conformity with the conditions imposed by the authority. It again provides for six months period during which the authority is to dispose of the same and it provides that powers should be exercised in the matter of sanction or its rejection within six months period. Sub-section (8) of Section 32 of the Act provides that if the authority does not refuse sanction within six months from the date of the application under sub-section (2) or from the date of receipt of all information asked for, under sub-section (7) such sanction shall be deemed to have been granted and the applicant may proceed to form the extension or layout or to make the street, but not so as to contravene any of the provisions of this Act and the rules or bye-laws made under it. Sub-section (2) is penal section which provides for penalty for the contravention of sub-section (1) or for making the streets without as well as or otherwise than in conformity with the orders of the authority.

Sub-section (5-A) which has been quoted above provides that Notwithstanding anything contained in the Bangalore Development Authority Act, 1976 the authority may require the applicant to deposit before sanctioning the application for layout plans such further sums in addition to the sums referred to in sub-section (5) to meet such portion of the expenditure as the authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other amenities within the Bangalore Metropolitan Area. Sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 appears to confer power to make additional revenue demand in addition to the one mentioned in sub-section (5) of Section 32 of the Act. That sub-section(5) indicates that where the applicant agrees to

transfer the ownership of roads, drains, water supply mains along with the space owned by him to the authority permanently without claiming any compensation, then, the authority may u/s 32(5) require the applicant to deposit before sanctioning the application the sums necessary to meet the expenditure for making the roads, drains, underground drainages, water supply, electricity etc., for such other purposes. Sub-section (5-A) of the Act as mentioned earlier empowers the authority to require the applicant to deposit before sanctioning the application the additional sums i.e., additional sums i.e., sums in addition to the sums referred in sub-section (5) to meet a portion of expenditure as the authority may determine towards the execution of any scheme or work for augmenting the water supply schemes, electricity, roads, transportation or other amenities within the Bangalore Metropolitan Area. The question arises to what extent the authority may require the applicant to deposit before sanctioning the layout plan. The section only says that such portion as the authority may determine towards these works. Now, how the authority is to determine, what is the guide lines to determine etc., are not indicated. No principle appears to have been laid down nor indicated for the authority to be kept in view and followed when determining such portion of the expenditure, Which expenditure have to relate and are to be made or to be incurred in the execution of any schemes or works as referred. No doubt, the schemes or works for augmenting the water supply, electricity and other amenities only provide that it should be worked within the Bangalore Metropolitan Area, or work is to be for the benefit of the Bangalore Metropolitan Area to provide amenities within the Bangalore Metropolitan Area But, the question is that out of that expenditure which the Bangalore Metropolitan Area has to bear or incur what portion thereof the applicant seeking approval of layout plan etc., will be required to deposit and how the proportion or a portion of that is to be determined by the authority. There is nothing in this section to indicate, or to provide-any guide line. There are no rules framed under the Act with reference to sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 to provide guide lines or to indicate as to how that is to be determined. The section does not by itself provide any procedure of either hearing or of giving the notice to the persons affected, or there being opportunity of being heard being given to person before determination of the portion of the expenditure which the Bangalore Development Authority has to incur with reference to those schemes or works to be levied there under.

27. The learned Counsel for the respondents contended as mentioned earlier that as the purpose of those schemes is for the benefit of the people within the Bangalore Metropolitan Area whether it being carried or worked out side that area for works or schemes for augmenting water supply schemes, electricity, or other amenities and when it is for the benefit of the whole area and a portion may be determined for being levied keeping in view the context the proportion of portion in which the applicant may be said or may become entitled to enjoy the amenities qua other persons, but it in our opinion cannot furnish any clear

guidance or enlightenment on the point of apportionment and is vague. At what rate, it should be nothing is provided in the section, no remedy against such determination as is provided or referred to in sub-section (5-A) to Section 32 of the Act is provided.

28. As far as Article 14 of the Constitution of India, it has been a subject matter of consideration and interpretation in very many cases by their Lordships of the Supreme Court in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, in paragraph 12 their Lordships observed that the cases in which where a statute may come for consideration on the question of its validity under Article 14 of the Constitution may be placed in one or other of the clauses referred and indicated therein. In para 12 (iii) their Lordships laid down as under:-

A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter or the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation, of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law.

29. In the case of Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, their Lordships followed and quoted with the approval the above principle laid down in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, referred to above and the principle laid down is to the same effect. At page 1608 their Lordships further laid down that it is not, however, essential for the Legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provisions itself and the guidance may be obtained from the preamble of the Act read in the light of the surrounding circumstances which necessitated the legislation.

30. In the present case, sub-section (5-A) of Section 32 of the Act, does not appear to provide any guide lines so as to determine as to what exact portion of the expenditure should the applicant be required to deposit. No doubt, the entire

expenditure cannot be fastened on the applicant. It does not provide any guide lines in this regard.

31. It does not provide the portion of the amount the applicant may be required to deposit shall bear any percentage on the basis of enjoyment of the benefit by the applicant or the applicant likely to enjoy the benefit; qua enjoyment by total area or its population. It also does not provide that, the applicant before being required to pay will have opportunity of disputing that claim and challenging the correctness of the portion proposed by the authority to be fastened on him. Really the section appears to confer unbridled powers without providing any guide lines or guidance in that regard. The section also does not provide any remedy against the order of authority u/s 32 (5-A) of the Act.

32. The learned Counsel for the respondents contended that there is remedy against the order of the authority u/s 63 of the Act by way of revision to the Government which may consider the legality or propriety of the order or proceedings. In our opinion, this contention of the learned Counsel is without substance. In view of the non-absent clause contained in sub-section (5-A) of Section 32 of the Act which provides that exercise of that power and it may result in or it may cause irrational discrimination between the same set of persons and the persons may be deprived of their properties in the form of money by the exercise of sweet will and unbridled discretion of the authority concerned. In our view this provision as it confers unbridle and uncontrolled power on the authority as such it may enable unequal and discriminatory treatment to be accorded to the persons and it may enable the authority to discriminate among the persons similarly situated. Tested by the yardstick of the principle laid down in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, . We find that the provision of sub-section (5-A) of Section 32 of the Bangalore Development Act, 1976 suffers from vice of discrimination and has tendency to enable the authority to discriminate and as such is hit by Article 14 of the Constitution. When we so observe and hold we find support for our view from the decision of their lordships of the Supreme Court in the case of *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, In Paragraphs 15 and 16 of the said report, their lordships observed and held as under;

(15) Further citation is unnecessary, for the principle of excessive delegation is well settled and the cases are only illustrations of the application of the said principle. The law on the subject may briefly be stated thus:

The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in

such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay down any policy at all; It may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for it self any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or In delegation, is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of an Impugned statute whether the legislature exceeded such limits. But the said liberal construction should not be carried by the Courts to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on executive authorities. It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on the executive by the legislature.

See Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others,

(16) u/s 5 of the Punjab General Sales Tax Act, 1948, as it originally stood, an uncontrolled power was conferred on the provincial Government to levy every year on the taxable turnover of a dealer a tax at such rates as the said Government might direct. Under that section the Legislature practically effaced itself in the matter of fixation of rates and it did not give any guidance either under that section or under any other provisions of the Act....no other provision was brought to our notice. The argument of the learned counsel that such a policy could be gathered from the constitutional provisions cannot be accepted, for, if accepted, it would destroy the doctrine of excessive delegation. It would also sanction conferment of power by Legislature on the executive Government without laying down any guidelines in the Act. The minimum we expect of the Legislature is to lay down in the Act conferring such a power of fixation of rates clear legislative policy or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that Section 5 of the said Act, as it stood before the amendment was void.

33. We further find support for our view from the decision of the Supreme Court in the case of State of Kerala and Others Vs. M/s Travancore Chemicals and Manufacturing Co., & Anr. etc., (1998 (a) Supreme 336) as per observations contained in paras 10 to 13 thereof.

34. Thus, considered in our view sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 suffers from vice of excessive legislative delegation as it confers unbridled, uncontrolled, powers to the authority to collect or extract money from the person/persons applying for the approval of residential layout plan and as such is hit by Article 14 of the Constitution of India.

35. That the learned Counsel for the respondents as per the submissions made by him, as well as from the pleadings in the statement of objections, has asserted that the demand of the sums or amount under the various heads, such

as augmenting water supply schemes, electricity, underground drainages, transportation or the like as mentioned in the annexures to the writ petitions whereunder approval had been granted for residential layout plan, is subject to the condition of deposit of those amounts under various heads, has been made in exercise of powers U/s 32 (5-A) of the Act and The conditions imposed cannot be said to be invalid or without authority. Learned Counsel also urged that their claim is based on the authority and power conferred under sub-section (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 That the main sheet anchor of respondent i.e., Section 32 (5-A) has been found and held to be ultra vires as being hit by Article 14 of the Constitution. The demand, as such, made or levy made or required to be paid and requirement of the depositing of the amount under the various heads under order of Bangalore Development Authority is per se illegal and without jurisdiction to the extent of its making the approval or sanction granted, subject to compliance of condition requiring deposit of sums levied u/s 32 (5-A) of the Act is null and void and ineffective without affecting the approval and sanction granted.

36. The writ petitions, as such, have to be allowed and are hereby allowed and it has to be held that the conditions imposed for deposit of the amounts mentioned in the impugned orders relating to the grant or approval of the residential layout plans to the extent of the said conditions were illegal, null and void as the said conditions have been illegally imposed u/s 32 (5-A) of the Act as is hit by Article 14 of the Constitution and so is declared to be void and inoperative and are to be quashed without affecting adversely in any manner the approval or sanction granted to layout plan or work order granted in each case.

37. Thus, considered, we allow the above writ petitions, but no doubt, maintaining the order granting permission or sanction accorded by the Bangalore Development Authority to the residential layout plans or work order. We quash the portion of the order which requires or compels the petitioners to deposit sums referred under conditions therein. As conditions are being held to be null and void and inoperative, the Bangalore Development Authority is directed not to compel or force the petitioners to comply with the illegal demands made by it under the garb of the order of sanction of the residential layout plans or work order. That Bangalore Development. Authority is directed to refund the collections made of amounts under said order or provision made by it from the petitioners, if any, vide orders impugned, in the writ petitions and annexed thereto.

38. The parties to the writ petitions are directed to bear their own respective costs.