

(1990) 08 KAR CK 0065
In the Karnataka High Court
Case No : Writ Petition No. 345 of 1989

Vishwabharathi House Building Co-operative Society Limited
and Another

APPELLANT

Vs

The Bangalore Development Authority, Bangalore and
Another

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Bangalore Development Authority (Allotment of Sites) Rules, 1984 — Rule 8, 9
Bangalore Development Authority Act, 1976 — Section 69, 69 (1)
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1991 Kar 133 : (1990) ILR (Kar) 2975

Hon'ble Judges : H.G. Balakrishna, J

Bench : Single Bench

Advocate : N.D.R. Ramachandra Rao, for the Appellant; K. Gopal Hegde, for the Respondent

Judgement

1. The petitioners have sought for a declaration that Rule 8 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984 providing for levy of Registration fee is ultra vires and unconstitutional and for a declaration that the Bangalore Development Authority has no authority of law to collect application fee for allotment of sites. They have also sought for a direction to respondent-1 to refund to the concerned general public all the amounts received by it in the form of registration fee and application fee under the impugned rule.

2. u/s 69 of the Bangalore Development Authority Act, 1976 (hereinafter referred to as "the Act"), respondent-2 which is the State of Karnataka has framed rules called the Bangalore Development Authority (Allotment of Sites) Rules, 1984 (hereinafter referred to as "the Rules"). Rules 8 and 9 of the Rules read as follows :--

"8. REGISTRATION :-- (1) Every applicant for a site shall register his name on payment of registration fees as specified in the table below. If an applicant

withdraws the registration the Authority shall refund to such applicant the entire registration fee paid by him after deducting ten per cent of the registration fee towards service charges. The Registration shall be done in Form No. I.

TABLE

Area of the Site in Sq. Metres

Registration fee

(a)

350 and above

Rs. 2000

(b)

225 and above but below 350

Rs. 500

(c)

Below 225

Rs. 100

(2) Registration made shall be valid for subsequent allotments unless the applicant has withdrawn the registration.

9. APPLICATION:-- (1) A person so registered as above has to apply in the prescribed Form II for allotment of a site along with the initial deposit of 12 1/2% of the notified cost of the site. The initial deposit shall be 5% in the case of persons applying for sites under the categories of Scheduled Castes, Scheduled Tribes and Backward Tribes.

(2) The applications shall be presented in person or sent by registered post so as to reach the office of the Authority before the date and time fixed for the receipt of such applications. Applications received after the date and time fixed or which are defective and incorrect shall be rejected.

(3) In a case where applications have already been made for allotment of sites in response to a Notification already issued by the Authority and where the applications are still pending without a decision as to their disposal and fresh applications have been called for, for allotment of further sites, the applicant who has already applied for allotment of a site and paid the initial deposit in response to the first Notification, need not pay once again the initial deposit. However, he should make application in response to the second Notification in Form-II(A) which is appended to these rules."

3. The petitioners state that ever since the establishment of the Bangalore Development Authority ("B.D. A." for short) until rules were framed in 1982,

respondent-1 was not insisting upon registration and payment of registration fee. The 1982 rules also did not contain any provision for payment of registration fee and for compulsory registration. The petitioners are aggrieved because Rule 8 envisages not only registration of applicant but also payment of registration fee and application fee,

4. It is contended by the petitioners that levy of fee or tax should be within the ambit of the 7th Schedule of the Constitution of India. According to the petitioners, List-I of 7th Schedule does not provide for levy of fee in respect of any of the matter in the list. But Lists-I, II and III do not refer to levy of fee for registration and therefore the State Legislature has no power to pass any enactment or frame any rules providing for levy of registration fee, The second contention is that taxes are specifically distributed between the Union and the State Legislature by various entries in Lists-I and II and the residuary power to levy a tax which is not enumerated in any of these entries belongs to the Parliament under Entry 97 of List-I. It is contended that respondent-2 under the guise of levying a fee has imposed a tax and it is a colourable exercise of power. According to the petitioners what is imposed is not fee in reality, but only a tax and that there is no quid pro quo to justify the imposition of tax. The only service rendered by respondent-1 is the entry of the name of the applicant in a registration book assigning a registration number and the stationery and labour spent is only a drop of ink, 1/10th of an inch space in the register and about 30 seconds of the time of the concerned assistant to write the name and the total cost of rendering the said service will not be more than a rupee whereas under the impugned rule respondent-I is collecting Rs. 2,000/- from the person who desires to apply for a site measuring 50" x 80", Rs. 500/- for a site measuring 40" x 60" and Rs. 100/- for a site measuring 30" x 40". Besides the said collection, respondent-1 is also collecting Rs. 10/- as application fee at the time of giving the applicant Form No. II and this is also not correlated to the services rendered. It is further contended that the rule which enabled the imposition and collection of both registration fee and application fee is beyond the scope of the Act and that no provision of the Act empowers the framing of rules enabling recovery of registration fee and application fee. Another contention is that the Act does not provide for registration of an applicant and that the rule framed is ultra vires the Act. It is alleged by the petitioners that the registration of applicant and recovery of fee for giving an application and also for registration is only a ruse to collect money from the innocent members of the public through illegal means. It is pointed out that respondent-1 used to collect from the members of the public residing within the jurisdictional limits of the B.D.A. property tax, cesses, fees etc.. and this Court in W.P. Nos. 7912 to 7914/86 and 18839 to 18842/86 held that the B.D.A. has no authority to collect such taxes, cesses and fees. Finally, it is contended that the impugned rule is violative of Arts. 13, 14, 265, 277 and Lists-I, II and III of the 7th Schedule of the Constitution of India.

5. In the statement of objections filed by the B.D.A.. it is contended that the

petitioners have no locus standi to maintain the writ petition. Secondly, it is contended that there is inordinate delay in approaching this Court for any relief to which the petitioners are entitled. Thirdly it is submitted that in the running of the administration of the institution, the B.D.A. is incurring a sum of Rs. 30 lakhs per month apart from other expenses for scheme etc., and the special rule has been introduced for safeguarding the interest of the public and that the B.D.A. is entitled to collect registration fee in order to maintain the administration of the institution and the services rendered in the development works and schemes. It is also contended that the petitioner society has not chosen any bona fide interest nor has it made out sufficient cause in maintaining the writ petition. In para 5 of the statement of objections, respondent-1 has contended as follows:--

"It is submitted that about more than one lakh people have registered with the B.D.A. for grant of sites and many of them are waiting in queue for the last few years. There is lot of pressure on the B.D.A. by the Government and public to make allotment of sites. The Authority has been trying its best to make allotment of sites to the needy persons to expedite the process of providing shelter to the people. Under the circumstances, in respect of some layouts allotment of sites are made when the developmental works were either substantially completed or were under progress, with the idea that by the time the allottees build the houses the necessary infrastructure and providing basic amenities like roads, drainage, electricity and water supply would be completed. It is relevant to submit here that the respondent-authority has introduced few well known schemes such as Self Financing Scheme, MIG, LIG and also started group housing construction to provide shelter to the needy and helpless persons. The Authority is endeavouring its best to complete the developmental works in the layouts wherever such works are in progress. The averments made in the writ petition are vague and the petitioners have not specified in what layout what development work is not taken up and as to what are the works yet to be completed. The petitioners have several litigations against this authority. They have filed writ petitions after writ petitions with a view to harass this authority and to compel this authority to heed to all his demands with regard to the layouts of its society. This respondent will place list of the cases which the petitioner has filed against the B.D.A. at the time of hearing. The petitioner not being an allottee of a site from the B.D.A. in any of the layouts, it has no locus standi to file the writ petition although it has styled it that it is a public interest litigation."

6. The point for consideration is whether Rule 8 of the Bangalore Development Authority (Allotment of Sites) Rules, 1984 is ultra-virus the Bangalore Development Authority Act, 1976 and whether the petitioners are entitled to a declaration that the Bangalore Development Authority has no authority of law to collect the registration fee and application fee and also whether a direction could be issued to respondent-1 to refund to all the concerned members of the general public the amounts received by the Bangalore Development Authority in the form of registration fee and application fee.

7. Rule 8 of the Rules needs to be examined in order to determine the vires of the same. The rule provides that every applicant for a site shall register his name on payment of registration fees at the rate indicated in the table mentioned therein. The registration fee is based on the area of the site and not on any other consideration. If the area of the site is 350 square metres and above, the compulsion for payment of registration fee is to the extent of Rs. 2,000/- and if the sital area measures 225 square metres but does not exceed 350 square metres, the fee to be paid is Rs. 500/- and if the area of the site falls below 225 square metres, a sum of Rs. 100/- is liable to be paid by the applicant. There is also a provision for refund of the registration fee if the registration is withdrawn and further the registration made will be valid for subsequent allotments unless the applicant has withdrawn the registration.

8. In reality, no applicant for a site is eligible to be considered for allotment of a site if he does not pay the registration fee and have his name registered by the B.D.A. The question of consideration of application for allotment arises only after compulsory registration. In other words, a person who is not willing to pay the stipulated registration fee will lose his right to be considered for allotment purpose. Payment of registration fee and registration of the name are conditions precedent for consideration of the application for allotment of a site. Three aspects arise for consideration in an analysis of this rule. The first aspect relates to the element of compulsion on an aspiring allottee to pay the stipulated registration fee and for registration of his name. The element of compulsory exactionn of money is involved in the process. The second aspect is the rationality or otherwise of the basis for stipulation of registration fee on consideration of the sital area. The third aspect is the service element and its existence or otherwise. In this context, it is necessary to determine whether the exactionn of registration fee is in the nature of a tax and if so whether the B.D.A. is competent to levy and recover tax whatever the nomenclature given to it.

9. The main plank of argument of the learned Counsel appearing for the petitioners is that there is no quid pro quo between the fee collected and the service rendered, the contention is that there should be a nexus between the levy and collection of registration fee and the service rendered, if any, and that there should be at least a reasonable satisfaction of the object to be achieved if the money collected is in the form of fee and not in the form of tax. The other contention is that though it is termed as registration fee, it is only a camouflage hiding the levy and collection of tax which is beyond the competence of the B.D.A. unless supported by a legislative enactment statutorily empowering it to levy and collect tax. The other contention is that the basis for variation of the registration fee by adopting the area of the site is irrational and unreasonable.

10. The rule does not indicate the purpose behind the collection of registration fee apart from the extent of the sital area as the basis for collection as to what purpose is sought to be achieved.

11. I cannot accept the plea that registration of the name of the applicant could

be equated to service rendered, Apart from registration of the name of the applicant, the authority has to demonstrate what are the services rendered by the B.D.A. for recovering various denominations of registration fee. In the statement of objections filed by the B.D.A., it is stated that the B.D.A. has introduced Self Financing Scheme, M.I.G., L.I.G, and has also started group housing construction to provide shelter to the needy and helpless persons and the authority is endeavouring its best to complete the developmental works wherever such works are in progress. I do not find any other justification offered by the B.D.A. for recovery of the registration fee. It is evident from the stand taken by the B.D.A. that no personal service is rendered to the individual applicant who pays the registration fee. Allotment of a site for the price paid separately by the applicant cannot be described as service rendered by any stretch of imagination. If the intention of the B.D.A. is to utilise the registration charges collected from the applicants in order to augment the financial resources for developmental activity, it partakes the character of a tax and not a fee. In a sense the levy and recovery of registration charges for such a purpose could be characterised as resource mobilisation for a collateral purpose. It can also be described as a measure of collective service under schemes such as Self Financing Scheme, M.I.G., L.I.G. and group housing construction intended for the benefit of the needy and helpless persons. The stand taken by the B.D.A. supports the contention that what is imposed and collected-from the applicant in the form of registration fee is nothing but tax. Tax is not leviable unless the statute empowers the B.D.A. to do so. In this regard, reliance is placed on the provisions of S. 69 of the Act which reads as follows:--

"69. Power to make rules; (1) The Government may by notification make rules to carry out the purposes of this Act.

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

(a) for the guidance of the Authority and persons connected with the administration of this Act or in cases not expressly provided for herein;

(b) the manner of election of members by the Councillors of the Corporation;

(c) the conditions of service of the Chairman and other members of the Authority;

(d) the manner of appointment of committees and the period of such appointment;

(e) the terms and conditions subject to which the Authority may take up development scheme of work and execute it;

(f) the particulars to be specified in the application of the scheme;

(g) the restrictions, conditions and limitations subject to which the Authority may lease, sell or transfer movable or immovable property;

(h) regulating the allotment or sale by auction of sites by the Authority;

(i) the manner of reconstitution of the Authority;

(j) any other matter which has to be or may be prescribed by rules."

12. Section 69(1) of the Act confers on the State Government the rule making power by notification to carry out the purposes of the Act. u/s 69(2)(g) of the Act, the rules so framed may provide for the restrictions, conditions and limitations subject to which the B.D.A. may lease, sell or transfer movable or immovable property. Section 69(2)(h) of the Act provides that the rules may envisage regulation of the allotment or sale by auction of sites by the B.D.A.

13. It is thus seen that the rules framed by the State Government may contain the restrictions, conditions and limitations subject to which the B.D.A. may lease, sell or transfer movable or immovable property. This provision, in my opinion, does not empower the B.D.A. to prescribe registration fee either in the nature of a restriction or a condition or a limitation for lease or sale or transfer of movable or immovable property. The State Government has not conferred by Rule 8 of the Rules, on the B.D.A. the power to impose tax and collect tax in the form of registration fee from the applicants. Even assuming that the rule empowers the authority to levy and collect registration fee, it cannot be said that the State Government has the power to authorise the B.D.A. to impose and collect tax by way of registration fee in the absence of a legislative enactment to do so. It is not possible to accept the argument that by virtue of S. 69 of the Act the State Government is empowered to make a rule for imposition of tax on the applicant for allotment of sites. The taxing power can only be exercised by the Legislature and not by the State Government. Similarly, S. 69(2)(h) of the Act cannot be regarded as a provision which enables either the State Government or the B.D.A. to levy and collect tax in the form of registration fee for the purpose of regulating the allotment of sites by the B.D.A. In short, neither Section 69(2)(g) nor S. 69(2)(h) of the Act authorises and empowers exaction of tax from the applicants under the guise of registration charges either in the form of restriction or condition or limitation for lease or sale or transfer of movable or immovable property or for the purpose of regulating the allotment of sites by the B.D.A. I am of the opinion that Rule 8 of the Rules is ultra vires and unconstitutional.

14. When an applicant seeks to make an application before the B.D.A. for allotment of a site and when he is compelled to register his name on payment of the stipulated registration fee if at all his application is to be considered for allotment, it cannot be gainsaid that the applicant is not on equal terms with the recipient for any reason such as where the latter declines to consider the question of allotment unless the applicant pays an unlawful premium to have his name registered. To this extent, it is possible to hold that the doctrine of Duress comes into operation and renders the taxation otherwise described as registration fee as a species falling in the duress category.

15. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, whereas fee is a payment for a specific

service rendered. I may say that there is nothing new in principle. If there is novelty, it is in the instance only. We must view the act in its setting which will include the implications and compulsions of fair dealing and public interest.

16. In *Rajni Kant Verma Vs. State*, the Court made a distinction between fee and tax and the principle laid down is remarkably relevant to the facts of this case. The view taken was (at p. 361 of AIR):--

"Two elements are essential in order that a payment may be regarded as a fee. In the first place it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and, in the second place, the amount collected must be ear-marked to meet the expenses of rendering these services and must not go to the general revenue of the State to be spent for general public purposes."

17. It appears to me that the words "registration fee" manifestly mean that the fee is intended to be and is charged only for the purpose of registration of the name of the applicant for the purpose of considering his application for allotment and not for any other purpose. The contention of the B.D.A. that this money is also intended to supplement the resources towards welfare and developmental activity of the community at large is clearly beyond the scope and authority because the purpose is collateral. The mere fact that it is refundable in the event of the applicant withdrawing his registration and that the same registration fee will also hold good for future allotments does not take away the character of irrationality and illegality of the levy. I, therefore, hold that Rule 8 of the Rules which empowers the levy and collection of registration charges is unsustainable.

18. Much has been made of objection based on lack of locus standi of the petitioners to maintain the writ petition. Undisputedly the first petitioner is a Society and the second petitioner is a rate payer. In this context, I am tempted to quote Lord Denning M.R.:--

"If he has not sufficient interest, no other citizen has.

Unless any citizen has standing, therefore, there is often no means of keeping public authorities within the law unless the Attorney General will act much frequently he will not. That private persons should be able to obtain some remedy was therefore a matter of high constitutional principle.

The Court will not listen of course to a mere busy body who was interfering in things which did not concern him. But it will listen to any one whose interests are affected by what has been done."

R.V. Paddington Valuation Officer.

19. Lord Diplock affirmed the same principle when he said : -

"It would, in my view, be a grave lacuna in our system of public law if a pressure group like the federation or even a single public spirited tax payer were prevented by outdated technical rules of locus standi from bringing the matter to

the Court to vindicate the rule of law and get the unlawful conduct stopped."

Therefore, it would be possible to hold that a citizen's actions are "action Popular is" in principle being permissible in suitable cases, and the instant case is not an exception.

20. Lord Diplock quoted with approval another eloquent passage from Lord Denning MR.;

"I regard it as a matter of high constitutional principle that if there is a good ground for supposing that a Government Department or public authority is Transgressing the law, or is about to transgress it in a way which offend or injures thousands of her majesty's subjects then any one of those offended or injured can draw it to the attention of the Court of Law and seek to have the law enforced and the Court in their discretion can grant whatever remedy is appropriate".

21. The Court has not only the power, but also the duty to weigh the public interest justice of litigants, against the public interest asserted by the public authority particularly when such an assertion is an anti-thesis of its own conduct. Considering the duty which such bodies owe to the members of the public, it would not be unjust to observe that no public interest immunity could be attached to such bodies against public interest litigation. Both the petitioners, in my opinion, have not only the locus standi, but also a lawful justification in approaching this court for the exercise of its discretionary power. The objection based on locus standi does not hold water.

22. In another land mark decision. Parker L.J. observed in Regina v. Thames Magistrates" Court ex parte Greenbaum (1957) 55 LGR 129:--

"No body can apply for it -- a member of the public who has been inconvenienced or a particular party or person who has a particular grievance of his own. If the application is made by what for convenience, one may call a stranger, the remedy is purely discretionary. Where, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies Ex debito Justitiae".

23. It is difficult to disagree with the proposition that every citizen has a standing to invite the Court to prevent some abuse of power and in doing so he may claim to be regarded not as a meddlesome busy body, but as a public benefactor. A rate payer likewise has a particular grievance if the rating list is invalidly made, even though the defect will make no difference to him financially Regina v. Paddington Valuation Officer, ex parte Peachey Property Corporation Ltd. (1966) 1 QB 380 .

24. As regards the argument that the writ petition is belated, it cannot be said that in approaching the Court through public interest litigation aggrieved by an existing rule which is seemingly ultra vires, the question of delay would arise at all. Constit Constitutionality of a rule can always be called into question. I do not

accept the argument that the writ petition is barred by laches.

25. In para 59 of the ruling in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , the Supreme Court held :--

"..... As seen earlier a party aggrieved by the infringement of any of its fundamental rights has a right to get relief at the hands of this Court and this Court has a duty to grant appropriate relief -- see Josep Pothan Vs. State of Kerala, . The power conferred on this Court by that Article is not a discretionary power. This power is not similar to the power conferred on the High Courts under Art. 226 of the Constitution. Hence laches on the part of an aggrieved party cannot deprive him of the right to get relief from this court under Art. 32. A Division Bench of the Bombay High Court in Kamalabai Harjivandas Pareka Vs. T.B. Desaid and Another, , held that where a constitutional objection to the validity of a legislation is taken in a petition under Art. 226, the question of mere delay will not affect the maintainability of that petition. Law reports do not show a single instance, where this Court had refused to grant relief to a petitioner in a petition under Art. 32 on the ground of delay."

In Para 61, it was observed : -

"Admittedly the provisions contained in the Limitation Act do not apply to proceedings under Art. 226 or Art. 32. The Constitution makers wisely, if I may say with respect, excluded the application of those provisions to proceedings under Arts. 226, 227 and 32 lest the efficacy of the constitutional remedies should be left to the tender mercies of the legislatures. This Court has laid down in I.C. Golak Nath and Others Vs. State of Punjab and Another, that the Parliament cannot by amending the Constitution abridge the fundamental rights conferred under Part III of the Constitution. If we are to bring in the provisions of Limitation Act by an indirect process to control the remedies conferred by the Constitution it would mean that what the Parliament cannot do directly it can do indirectly by curtailing the period of limitation for suits against the Government. We may console ourselves by saying that the provisions of the Limitation Act will have only persuasive value hut they do not limit the power of this Court but the reality is bound to be otherwise....."

26. In Abdul Majeed Qureshi Vs. Corporation of Calcutta and Others, it was held (at p. 178 of AIR) :-

"In my opinion, the contention of Mr. Gorai that the mere delay in this case ought not to bar the remedy, is well founded. In my view, there is no provision in the Act or in the Bye-laws which I have discussed earlier, which empowers or authorises the respondents to impose a licence fee on the purchasers of entrails and offals at the slaughter house. The provisions in the Act relied upon by the learned counsel for the respondents to justify the levy of the licence fee do not, in my view, sanction the imposition of a licence fee on the petitioner. The Calcutta Corporation is a statutory body and its powers to realise fees, charges and taxes have been defined and created by the statute and unless there is a

clear provision either in the statute or in the Bye-laws framed thereunder authorising the imposition of a licence fee on the petitioner, the imposition of the fee must be held to be unlawful....."

27. In *Lal Chand Jagan Nath Vs. The District Food and Supplies Controller and Others*, Mahajan J. took the view (at p. 411 of AIR) :--

"So far as the first contention is concerned, as the petitioner's fundamental rights have been violated, mere delay in approaching this Court under Art. 226 of the Constitution would be no ground to refuse him the relief. The first contention, therefore, is repelled."

28. A Division Bench of the Bombay High Court held in *Kamalabai Harjivandas Pareka Vs. T.B. Desaid and Another*, , as follows (at p. 48 of AIR) :--

"It seems to us that where a constitutional objection of this kind to the validity of a legislation is in question, what is involved is infringement of a fundamental right under the Constitution. In such a case, question of mere delay would hardly affect the maintainability of the petition, for, whether we consider the infringement of a fundamental right or consider the question of ultra vires, the objection is fundamental and omnipresent. It must be met and negatived or it remains at all future stages of a proceeding. It must be met at any subsequent stage of the litigation between the parties. In that view, we do not think that delay as such would be a good ground to defeat a constitutional objection of that kind."

29. On the question of locus-standi, there are a number of decisions both of the Supreme Court and this Court which support the petitioners on the question of locus standi.

30. In *S.P. Gupta Vs. President of India and Others*, a Constitutional Bench of the Supreme Court held while quoting with approval *Rex v. Inland Revenue Commissioners* (1981) 2 WLR 722 at 740 :--

"If public duties are to be enforced and social collective "diffused", rights and interests are to be protected, the initiative and zeal of public-minded persons and organisations must be utilised by allowing them to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case.

It is not possible for the Court to lay down any hard and fast rule or any straight-jacket formula for the purpose of defining or delimiting "sufficient interest". The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in

consonance with constitutional objectives, whether a member of the public moving the court in a particular case has sufficient interest to initiate the action.

Any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering, the cause of justices and accelerating the pace of realisation of the constitutional objective. But care should be taken to see that the member of the public, who approaches the court in case of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

In the instant case, I am convinced that both the petitioners have sufficient interest and have acted bona fide in approaching this Court for relief through public interest litigation. I am unable to see any oblique motive to suspect the bona fides of the petitioners.

31. In *Fertilizer Corporation Kamagar Union v. Union of India* AIR 1981 SC 344, at para 23 it is held as follows :--

".....But, we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Art. 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in watertight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Art. 226 or under Art. 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to the Parliament is ineffective because the Parliamentary control of public enterprises is diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust unfair or mala fide."

Again at page 364. the Supreme Court held as follows :--

"Law, as I conceive it, is a social auditor and this audit function can be put into action only when some one with real public interest ignites the jurisdiction. We cannot be scared by the fear that all and sundry will be litigation-happy and

waste their time and money and the time of the Court through false and frivolous cases. In a society where freedoms suffer from atrophy and activism is essential for participative public justice. some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pedantry now surrounding locus standi.

Schwartz and H.W.R. Wade wrote in Legal Control of Government :

"Restrictive rules about standing are in general inimical to a healthy system of administrative law. If a plaintiff with a good case is turned away, merely because he is not sufficiently affected personally, that means that some government agency is left free to violate the law, and that is contrary to the public interest. Litigants are unlikely to expend their time and money unless they have some real interest at stake. In the rare cases where they wish to sue merely out of public spirit, why should they be discouraged?....."

In para 41, the Court posited :

"India is an a fortiori case, especially as it suffers from the pathology of mid Victorian concepts about cause of action. The Australian Law Reform Commission in its discussion paper No. 4 has considered the pros and cons and strongly supported the wider basis for access to justice. Class actions will activate the legal process where individuals cannot approach the court for many reasons....."

In Para 44, the Court observed as follows:--

"Public interest litigation is part of the process of participate justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial doorsteps. The floodgates argument has been nailed by the Australian Law Reforms Commission :

"The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room. Prof. K.E. Scott :

"Standing in the Supreme Court : A functional Analysis" (1973) 86.

A major expressed reason for limiting standing rights is fear of a spate of actions brought by busybodies which will unduly extend the resources of the courts. No argument is easier put, none more difficult to rebut. Even if the fear be justified it does not follow that present restrictions should remain. If proper claims exist it may be necessary to provide resources for their determination. However, the issue must be considered.

.....Over recent years successive decision of the United States Supreme Court have liberalised standing so as to afford a hearing to any person with a real interest in the relevant controversy. Surveying the result in 1973 Professor Scott commented : (Op Cit, 673)

"When the floodgates of litigation are opened to some new class of controversy by a decision it is notable how rarely one can discern the flood that the

dissenters feared.

Professor Scott went on to point out that the liberalised standing rules had caused no significant increase in the number of actions brought, arguing that parties will not litigate at considerable personal cost unless they have a real interest in a matter".

32. *Tn Rudraiah Raju v. State of Karnataka* ILR 1986 Kant 587, a Division Bench of this Court expressed the opinion at page 618 as follows :--

"The submission made for the respondents is misconceived. It is not correct to state that the petitioners are just two persons among the citizens of India and not more, A citizen and a voter has sufficient interest to claim that the elected representatives and officers entrusted with the Governmental power under the Constitution and the Laws should carry on the administration fairly and according to law and bona fide. In other words, Rule of Law being one of the basic structures of the Constitution, if it is breached, a citizen can seek redress in the Courts. The violation of rule of law is per se injurious to public interest, it may be, if the decision of the type concerned in these cases of the Government of Karnataka were to be challenged before this Court by a citizen and resident of any other State in India, he may be described as just a person among 660 million who has no sufficient interest. Similarly, if a licence for construction of a high rise building in the City of Bangalore is given by the Corporation of the City of Bangalore in violation of Town Planning Act, a resident and voter of any other City or Town could not be regarded as a person having sufficient interest to maintain a petition. But in such a case as held by a Division Bench of this Court in *M.D. Narayan v. State of Karnataka* (1982) 2 Kar LJ 35, a resident of the City of Bangalore is a person having sufficient interest. Therefore, we are unable to agree that the petitioners who are voters and rate payers in the State have no sufficient interest to maintain the petitions."

Commenting on public interest litigation, the Court observed :

"A contrary view in our considered opinion would be disastrous to public interest, for, if the Government confers a largess or privilege to certain individuals in preference to others seeking the same largess or privilege, flouting the law which undermines the faith of the people in Rule of Law and the unsuccessful applicants are won over or run over and the doors of the Courts are closed to Public interest Petitions on the ground that unsuccessful applicants have backed out, it would pave the way for destruction of Rule of Law which is one of the basic structures of the Constitution. To close the doors in such a case is itself injurious to public interest, for, the very existence of the possibility of challenge to such Governmental action by a member of the public before the Courts appointed as the sentinels of Rule of Law under the Constitution, would act as a check for the exercise of power in such manner and its absence, an encouragement to do so."

33. The following authorities clearly establish the distinction between fee and tax and the unknowns its Constitutionality of imposition and recovery of tax without

legislative warrant.

34. In *P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*, , the Supreme Court held as follows (at p. 110 of AIR):--

".....The test is the primary object of the levy and the essential purpose it is intended to achieve. The relationship between the amount raised through the "fee" and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation; but it would be sufficient that there is a broad and general correlation. But a fee loses its character as such if it is intended to and does go to enrich the general revenues of the State to be applied for general purposes of Government. Conversely, from this latter element stems the sequential proposition that the object to be served by raising the fee should not include objects which are otherwise, within ambit of general Government obligations and activities. The concept of fee is not satisfied merely by showing that, the class of persons from whom the fee is collected also derives some benefit from those activities of Government. The benefit the class of payers of fee obtain in such a case is clearly not a benefit intended as special service to it but derived by it as part of the general public.

Nor does the concept of a fee -- and this is important -- require for its sustenance the requirement that every member of the class on whom the fee is imposed, must receive a corresponding benefit or degree of benefit commensurate with or proportionate to the payment that he individually makes. It would be sufficient if the benefit of the special services is available to and received by the class as such. It is not necessary that every individual composing the class should be shown to have derived any direct benefit. A fee has also the element of a compulsory exaction which it shares in common with the concept of a tax as the class of persons intended to be benefited by the special services has no volition to decline the benefit of the service. A fee is, therefore, a charge for the special service rendered to a class of citizens by Government or Governmental agencies and is generally based on the expenses incurred in rendering the services."

35. In *The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory*, , it is held as follows (at pp. 850 and 851 of AIR) :--

"A tax is a compulsory exaction of money by a public authority for a public purpose enforceable by law and is not a payment for any specified service rendered. The levy of a tax is for the purpose of general revenue, which, when collected, forms part of the public revenues of the State. There is no element of quid pro quo between the tax payer and the public authority. A fee, however, is generally defined to be a charge for a special service rendered to individuals by the Government or some other agency like a local authority or statutory corporation. The amount of fee levied is supposed to be based on the expenses incurred in rendering the services though, in many cases, the costs are arbitrarily

assessed. Fees are generally uniform but absence of uniformity is not a criterion on which alone it can be said that the levy is in the nature of a tax. As a fee is regarded as a sort of return or consideration for services rendered, it is necessary that the levy of a fee should be correlated to the expenses incurred in rendering the services. It is also generally necessary that the payments demanded for rendering services must be set apart or specifically appropriated for that purpose and that they should not be merged in the general revenue of the State to be spent for general public purposes. It may not, however, be possible to prove in every case that the fees collected always approximate to the expenses that are incurred in rendering the particular kind of services or in performing any particular work for the benefit of certain individuals,"

36. In *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, the Supreme Court considered the distinction between fee and tax and held as follows (at pp. 1015-16 and 1021 of AIR) :

"The authorities, more often than, not, almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which, they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others. But generally and broadly speaking it must be shown with some amount of certainty, reasonableness or preponderance of probability that quite a substantial portion of the amount of fee realised is spent for the special benefit of its payers."

"..... In *The Chief Commissioner, Delhi and Another Vs. The Delhi Cloth and General Mills Co. Ltd. and Others*, , the question for consideration was whether the registration fee charged on the document satisfied the two conditions of fee which were enumerated in the following language:--

(i) there must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the service may be;

(ii) that the fee realised must be spent for the purposes of the imposition and should not form part of the general revenues of the State,"

The second condition was found not to be fulfilled and hence the impost was held to be bad. We would like to point out that the first condition is rather couched in too broad and general a language. Rendering some service, however remote the

service may be, cannot strictly speaking satisfy the element of quid pro quo required to be established in cases of the impost of fee. But then, as pointed out, in some of the cases noticed earlier the registration fee has been taken to stand on a different footing altogether. In the case of such a fee the test of quid pro quo is not to be satisfied with such direct, close or proximate correlation-ship as in the case of many other kinds of fees. By and large registration fee is charged as a regulatory measure."

37. In *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, the Supreme Court held as follows (AIR HC 1187):

"From the above discussion it is clear that before any levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlation-ship. The correlation-ship expected is one of a general character and not as of arithmetical exactitude.

.....Assuming this conclusion to be correct, by doing so, the State is rendering no service to the consumer. It is merely protecting its own rights. Further in this case, the State which was in a position to place material before the Court to show what services had been rendered by it to the appellant and other similar licensees, the costs or at any rate the probable costs that can be said to have been incurred for rendering those services and the amount realised as fees has failed to do so. On the side of the appellant, it is alleged that the State is collecting huge amount as fees and that it is rendering little or no service in return. The correlation-ship between the services rendered and the fee levied is essentially a question of fact, Prima facie, the levy appears to be excessive even if the State can be said to be rendering some service to the licensees. The State ought to be in possession of the material from which the correlation-ship between the levy and the services rendered can be established at least in a general way. But the State has not chosen to place those materials before the Court. Therefore, the levy under the impugned Rule cannot be justified."

38. In *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , the Supreme Court observed as follows (at p. 295 of AIR):--

"A neat definition of what "tax" means has been given by Latham, C.J. of the High Court of Australia in-- "*Matthews v. Chicory Marketing Board*", 60 CLR 263 at p. 276.

"A tax", according to the learned Chief Justice, "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment "for services rendered"."

This definition brings out, in our opinion, the essential characteristics is of a tax as distinguished from other forms of imposition which, in a general sense, are

included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payer's consent and the payment is enforced by law vide-- "Lower Mainland Dairy v. Crystal Dairy Ltd." (1933) AC 168.

The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of "quid pro quo" between the tax-payer and the public authority, see Findlay Shirras on "Science of Public Finance", Vol.1, p. 203. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the tax payer depends generally upon his capacity to pay.

Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay, vide, Lutz on "Public Finance" p. 215. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

"..... We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees."

39. The contention of the petitioners that the collection of application fee is illegal, cannot be accepted. The fee prescribed is Rs. 10/- for each application and it will not be unreasonable to hold that the said sum of money is intended to cover the cost of stationary and printing. I, therefore, hold that the collection of the application fee is not questionable.

40. In the result, for the reasons stated above, I allow the writ petition partly. R. 8 of the Bangalore Development Authority (Allotment of Sites) Rules. 1984, is hereby struck down, in so far as it relates to imposition and collection of Registration Fee.

Consequently, the Registration Fee recovered by the Bangalore Development Authority on the basis of R. 8 of the above Rules is liable for refund.

Parties to bear their own costs.

41. Petition partly allowed.