State of U.P. and Others

Vs

Malti Kaul (Smt) and Another

Civil Appeals No. 9281 of 1995

(K. Ramaswami-II, G. B. Pattanaik JJ)

21.08.1996

ORDER

1. Application for intervention is dismissed. Leave granted in the special leave petition.

2. These appeals arise from the judgment of the Allahabad High Court dated 21-4-1995 declaring that the appellants are devoid of power to levy the development fee under the U.P. Urban Planning and Development Act, 1973 (11 of 1973) as amended from time to time (for short, "the Act").

3. The undisputed facts are that the appellant-authority was constituted under Section 4 of the Act as a development authority. When the respondents filed plans for grant of sanction, a demand was made of them to deposit the development fee. Calling the demands in question, the above appeals came to be filed. Consequently, declaration was made. In addition, the High Court also found that the demands for malba charges (stacking charges) and water charges were violative of principles of natural justice. Accordingly, it directed the appellants to give opportunity of being heard to the respondents and then levy charges. Calling the decision in question, these appeals have come to be filed. The High Court concluded that there is no provision in the Act or the Rules made thereunder, to demand and collect the development fee.

4. With a view to appreciate the contentions of the counsel on either side and the findings recorded by the High Court, it is necessary to consider the relevant provisions of the Act.

5. Section 4 contemplates that the State Government may, by notification in the Gazette, constitute, for the purpose of the Act, an authority called "Development Authority" for any development area. 'Development' has been defined in Section 2(e) with its grammatical variations, to mean the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes redevelopment. "Development area" has been defined in Section 2(f) to mean any area declared to be development area under Section 3. It has been empowered, where the Government in exercise of the power under Section 3 has declared that any area within the State requires to be developed according to the plan, to declare such area to be a development area. Section 7 envisages the objects of the authority and gives power to the developing authority to acquire, hold, manage or dispose of a land and any other property, to carry out building, engineering, mining and other operations, to execute works in connection with the supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto 'Amenity' has been so defined in Section 2(a) as to include road, water supply, street lighting, drainage, sewerage, public works and such other convenience as the State Government may, by notification in the Gazette specify to be an amenity

for the purposes of the Act. The expression "engineering operations" has been defined under Section 2(h) and includes the formation or laying out means of access to a road or the laying out of means of water supply. "Means of access" has been defined under Section 2(i) and includes any means of access, whether private or public, for vehicles or for foot passengers and includes a road.

6. It would thus be seen that the development authority has been enjoined to undertake the development of the development area including providing amenities or carrying out engineering operations or providing means of access as envisaged under the Act or any other amenities that may be specified by a notification by the State Government as part of development plans undertaken under the Act.

7. Section 14 in Chapter V on "Development of Lands" gives power to the developing authority and provides that after the coming into force of the plan in any development area, no development shall be undertaken or carried out or continued in that area unless such development is also in accordance with the plans. Under sub-section (1) thereof, after the declaration of any area as development area under Section 3, no development shall be undertaken or carried out or continued in that area by any person or body (including a department of the Government) unless permission for such development has been obtained in writing from the Vice-Chairman in accordance with the provisions of the Act. Therefore, before development is undertaken in accordance with the plan by any person or a body including the department of the Government, he is enjoined to obtain in writing from the Vice-Chairman sanction for development in accordance with the provisions of the Act. When the levy of the development fee was charged on the respondents, they came to question the power of the authority.

8. The question, therefore, is whether such a power is traceable to the provisions of the Act ? Section 33 of the Act gives power to the development authority to provide amenities or carry out development at the cost of the owner in the event of his default and to levy cess in certain cases. Under sub-section (1) thereof, if the authority is satisfied, after conducting the enquiry as contemplated therein or upon report from any of its officers or other information in its possession, that any amenity in relation to any land in development area has not been provided in relation to that land which, in the opinion of the authority ought to have been or ought to be provided or that any development of the land for which permission, approval or sanction has been obtained under the Act or under any other law in force before the Act came into force, has not been carried out, then after giving an opportunity to the owners of the land or persons providing or responsible for providing the amenity a reasonable opportunity to show cause, it may impose the development charges. Sub-section (2) contemplates that if any amenity is not provided or any such development is not carried out within the time specified in the order, then the authority may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit. By operation of sub-section (3), all expenses incurred in that behalf by the development authority or the agency are to be recovered in the manner indicated in sub-section (4) and the following sections the details of which are not material for the purpose of this case.

9. Section 41 envisages control by the State Government in implementation of the provisions of the Act. Under sub-section (1) thereof, the authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it/him from time to time by the State Government for the efficient administration of this Act. Section 56 gives power to make regulations under the Act. Sub-section (1) thereof provides that any authority may, with the previous approval of the State Government, make regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the authority. Therefore, the general power is available under Section

56 for the authority to make regulations for the administration of the affairs of the authority. In particular sub-section (2) thereof provides that despite the generality of the power given in sub-section (1) specific power has been given by way of regulations as enumerated thereunder. Clause (i) which is a residuary clause provides for any other matter which has to be or may be prescribed by the regulations.

10. By operation of Section 59, any orders issued under the predecessor Acts which are not inconsistent with the provisions of the Act shall continue to be in operation. Under Section 14 of the Uttar Pradesh (Regulation of Building Operations) Act, 1958 (predecessor Act) which is pari materia with Section 14 of the Act, regulations have been made which are not inconsistent with that of Section 8 and in that behalf provides for sanction of plans and statements. Direction (vii) provides that the applicant has entered into an agreement with the local body concerned for the development of the land and for provision of other amenities and has either deposited the full estimated cost of the development and provision of other amenities with that local body in advance or has given to it a bank guarantee equivalent to such cost, or has entered into an agreement with the local body, providing that the full cost thereof may be realised by it out of the sale proceeds of the plots that may be sold by the applicant; provided that any such agreement between the applicant and the local body may provide for any part of the development and provision of other amenities being carried out by the applicant himself; however, that in respect of any such part he shall give adequate security to the local body to secure that he shall carry out such part of the development and provide other amenities in accordance with the approved standards and specifications to the satisfaction of the controlling authority. Under the second proviso also, power has been given to secure mortgage of the entire land to be developed in favour of the local authority as a condition for granting sanction with an agreement for providing the amenities and if the plots are to be released for sale by the mortgagor then the amount has to be paid as prescribed thereunder, the details of which are not material for the purpose of this case.

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

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

13. Thus considered, we hold that the Act specifically gives such a power. It is true that under Article 265 of the Constitution no tax can be levied without any authority of law. There is no quarrel

on the proposition of law. In this case, from a reading of the aforesaid provisions it is clear that the statute, instead of prescribing the rate of developmental charges itself, has given power to the rule-making authority to regulate the collection of and payment of development fee. It is seen that under the direction which is not inconsistent with the provisions of the Act, it indicates the method and the manner in which the collection is to be secured so as to see that the area is developed in a planned manner as per the sanctions given by the competent authority. The High Court, therefore, was clearly in error in holding that there is no provision under the Act or the Rules to levy the development fee.

14. The High Court has relied upon the judgment of this Court in Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla [(1992) 3 SCC 285 : (1992) 3 SCR 328]. The said ratio has no application to the facts in this case. In that case, it was found as a fact that there was no express provision for levy and demand of the developmental charges. They sought to rely on the doctrine of ejusdem generis as a source to levy the development fee. The High Court has noticed that the authority under Section 19 has the heads enumerated in sub-section (1) of Section 91 as the source of funds. This Court found that the doctrine of ejusdem generis cannot be applied to levy and charge of development fee.

15. In Hingir-Rampur Coal Co. Ltd. v. State of Orissa [(1961) 2 SCR 537 : AIR 1961 SC 459] a Constitution Bench of this Court has held that a fee is levied essentially for services rendered and there must be an element of quid pro quo between the person who pays it and the public authority that imposes it. The public authority has the power to levy fee in respect of the services rendered. Therefore, compulsory exaction by levy of fee was not ultra vires the power of the authority.

16. It is sought to be contended for the respondents by the learned counsel that there is no express provision and that neither Section 33 or Section 41 can be fallen back upon to levy development fee. It is true that express mention is not made either in Section 33 or Section 41; but when Section 14 and Section 56(2) are read together, it gives right and power to the sanctioning authority to impose a condition to the grant of sanction for execution of the plan in a development area by imposing the condition of either payment in advance towards the cost of the amenities or means of access etc. or give bank guarantee or mortgage the plot which is to be developed etc. as enumerated hereinbefore. Therefore, the learned counsel is not right in contending that there is no provision under the Act to demand payment or bank guarantee towards the developmental charges of the amenities.

17. The High Court has pointed out that the appellants have no power to demand stacking charges (malba charges) or water charges in advance even before starting the construction. We are of the view that the High Court is right in that behalf. If and when any person uses any public place or street for stacking the material for construction, it would be obvious that such person is required to obtain prior permission for user and as a condition he has to pay the necessary fee prescribed in that behalf or when he uses the water for construction of the building, necessarily he has to pay the water charges as per the prevailing rates. But that would be a matter as and when the material was stacked on the public street or at the public place or water was in fact used. Therefore, the authority have no power to levy in advance the charges for stacking the material or user of the water.

18. It is to be seen that as regards the Agra Development Authority's demand for payment of Rs 17,33,245, the direction issued by the Division Bench is that the respondent should give bank guarantee at the rate of Rs 180 per sq. mtr. and undertake to pay the balance amount on his succeeding in that appeal now pending in this Court. In view of the above law, the learned counsel has rightly undertaken to give the bank guarantee for the amount demanded at the rate of Rs 500 per

sq. mtr. in the impugned demand which works out to Rs 17,33,245. We are informed that he has already given the bank guarantee at the rate of Rs 180 per sq. mtr. After deduction of the amount of that bank guarantee, for the balance amount also he should give the bank guarantee. On his giving the guarantee for the balance amount, the Agra Development Authority would release the sanction of the plan for execution. The bank guarantee will remain in force and should be kept alive till the development of the area and satisfactory completion certificate is issued by the competent authority in accordance with the rules. In the event of his completing the development and providing all the amenities according to the sanctioned plan, the bank guarantee given would get discharged.

19. The appeals are accordingly allowed, but, in the circumstances, without costs.