SUPREME COURT OF INDIA

Bangalore Development Authority

Vs.

Air Craft Employees Cooperative Society Ltd.

C.A.Nos.7503-7537 of 2002

(G.S. Singhvi and Asok Kumar Ganguly JJ.)

24.01.2012

JUDGMENT

G. S. SINGHVI, J.

1. These appeals are directed against the order of the Division Bench of the Karnataka High Court whereby the writ petitions filed by the respondents were allowed, Section 32(5A) of the Bangalore Development Authority Act, 1976 (for short, `the 1976 Act') was declared as violative of Article 14 of the Constitution, void and inoperative and the conditions incorporated in the orders passed by the Bangalore Development Authority (BDA) sanctioning residential layout plans or work orders in terms of which respondents were required to pay/deposit various charges/sums specified therein were quashed and a direction was issued for refund of the amount.

2. With the formation of the new State of Mysore, it was considered necessary to have a uniform law for planned growth of land use and development and for the making and execution of town planning schemes. Therefore, the State Legislature enacted the Mysore Town and Country Planning Act, 1961 (for short, `the Town Planning Act'). The objectives of that Act were:

> (i) to create conditions favourable for planning and replanning of the urban and rural areas in the State of Mysore, with a view to providing full civic and social amenities for the people in the State;
>
> (ii) to stop uncontrolled development of land due to land speculation and profiteering in land;

> (iii) to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land; and (iv) to direct the future growth of populated areas in the State, with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting general standards of living in the State.

3. The State of Mysore was renamed Karnataka in 1973. Thereupon, necessary consequential changes were made in the nomenclature of various enactments including the Town Planning Act.

4. Section 4 of the Town Planning Act envisages constitution of a State Town Planning Board by the State Government. By Act No.14 of 1964, the Town Planning Act was amended and Chapter I-A comprising of Sections 4-A to 4-H was inserted. These provisions enabled the State Government to issue notification and declare any area in the State to be a local planning area for the purposes of the Act and constitute the Planning Authority having jurisdiction over that area. Section 9(1) (unamended) imposed a duty on every Planning Authority to carry out a survey of the area within its jurisdiction, prepare and publish an outline development plan for such area and submit the same to the State Government for provisional approval. In terms of Section 12(1) (unamended), an outline development plan was required to indicate the manner in which the development and improvement of the entire planning area was to be carried out and regulated. Section 19(1), as it then stood, contemplated preparation of a comprehensive development plan and submission of the same for the approval of the State Government. Section 21 (unamended) gave an indication of the factors which were to be included in the comprehensive development plan. Section 26 (unamended) imposed a duty on every Planning Authority to prepare town planning schemes incorporating therein the contents specified in sub-section (1) of that Section. For the sake of reference, these provisions are extracted below:

> 4-A. Declaration of Local Planning Areas, their amalgamation, sub-division, inclusion of any area in a Local Planning Area. -
>
> (1) The State Government may, by notification, declare any area in the State to be a Local Planning Area for the purposes of this Act, this Act shall apply to such area:

Provided that no military cantonment or part of a military cantonment shall be included in any such area.

4-C. Constitution of Planning Authority. - (1) As soon as may be, after declaration of a local planning area, the State Government in consultation with the Board, may, by notification in the Official Gazette, constitute for the purposes of the performance of the functions assigned to it, an authority to be called the Planning Authority of that area, having jurisdiction over that area.

9. Preparation of Outline Development Plan.-(1) Every Planning Authority shall, as soon as may be, carry out a survey of the area within its jurisdiction and shall, not later than two years from the date of commencement of this Act, prepare and publish in the prescribed manner an outline development plan for such area and submit it to the State Government, through the Director, for provisional approval: Provided that on application made by a Planning Authority, the State Government may from time to time by order, extend the aforesaid period by such periods as it thinks fit.

12. Contents of Outline Development Plan.-(1) An outline development plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include,-

(a) a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;

(b) proposals for roads and highways;

(c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India; 6

(d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed;

(e) such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

19. Preparation of the Comprehensive Development Plan.-(1) As soon as may be after the publication of the Outline Development Plan and the Regulations under sub-section (4) of section 13, but not later than three years from such date, every Planning Authority shall prepare in the prescribed manner a comprehensive Development Plan and submit it through the Director together with a report containing the information prescribed, to the State Government for approval:

Provided that on application made by a Planning Authority, the State Government may, from time to time, by order in writing, extend the aforesaid period by such periods as it thinks fit.

21. Contents of the Comprehensive Development Plan.-(1) The comprehensive Development Plan shall consist of a series of maps and documents indicating the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. Such plan shall include proposals for the following namely:-

(a) comprehensive zoning of land-use for the planning area, together with zoning regulations;

(b) complete street pattern, indicating major and minor roads, national and state high ways, and traffic circulation pattern, for meeting immediate and future requirements;

(c) areas reserved for agriculture, parks, play- grounds and other recreational uses, public open spaces, public buildings and institutions and areas reserved for such other purposes as may be expedient for new civic development;

(d) major road improvements;

(e) areas for new housing;

(f) new areas earmarked for future development and expansion; and

(g) the stages by which the plan is to be carried out. (2) The report shall further contain a summary of the findings in the surveys carried out under sub-section (2) of section 19, and give relevant information and data supporting proposals in the plan and deal in detail with.-

(a) acquisition of land for the purpose of implementing the plan,

(b) financial responsibility connected with the proposed improvements, and

(c) the manner in which these responsibilities are proposed to be met.

26. Making of town planning scheme and its contents.—

(1) Subject to the provisions of this Act, a Planning Authority, for the purpose of implementing the proposals in the Comprehensive Development Plan published under sub-section (4) of section 22, may make one or more town planning schemes for the area within its jurisdiction or any part thereof.

(2) Such town planning scheme may make provisions for any of the following matters namely,--

(a) the laying out or re-laying out of land, either vacant or already built upon;

(b) the filling up or reclamation of low-lying, swamp or unhealthy areas or levelling up of land;

(c) lay-out of new streets or roads; construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications;

(d) the construction, alteration and removal of buildings, bridges and other structures;

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, green belts and dairies, transport facilities and public purposes of all kinds;

(f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(g) lighting;

(h) water supply;

(i) the preservation of objects of historical or national interest or natural beauty and of buildings actually used for religious purposes;

(j) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, size, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriated, the sub-division of plots, the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs;

(k) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule, bye- law, regulation, notification or order, made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend;

(l) such other matter not inconsistent with the objects of this Act as may be prescribed.

5. The 1976 Act was enacted by the State legislature in the backdrop of the decision taken at the conference of the Ministers for Housing and Urban Development held at Delhi in November 1971 that a common authority should be set up for the development of Metropolitan Cities. Before the constitution of the BDA, different authorities like the City of Bangalore Municipal Corporation, the City Improvement Trust Board, the Karnataka Industrial Area Development Board,

the Housing Board and the Bangalore City Planning Authority were exercising jurisdiction over the Bangalore Metropolitan Area. Some of the functions of these authorities like development, planning etc. were overlapping and creating avoidable confusion. Not only this, the intervention of multiple authorities was impeding coordinated development of the Metropolitan Area. It was, therefore, considered appropriate that a single authority like the Delhi Development Authority should be set up for the city of Bangalore and areas adjacent thereto which, in due course, would become part of the city. It was also realised that haphazard and irregular growth would continue unless checked by the development authority and it may not be possible to rectify/correct mistakes in the future. For achieving these objectives, the State legislature enacted the 1976 Act. Simultaneously, Section 81-B was inserted in the Town Planning Act for deemed dissolution of the City Planning Authority in relation to the area falling within the jurisdiction of the BDA. The preamble of the 1976 Act and the definitions of Authority, Amenity, Civic amenity, Bangalore Metropolitan Area, Development, Engineering operations, Local Authority, Means of access contained in Section 2 thereof are reproduced below:

> An Act to provide for the establishment of a Development Authority for the development of the City of Bangalore and areas adjacent thereto and for matters connected therewith

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

> (a) Authority means the Bangalore Development Authority constituted under section 3;
>
> (b) Amenity includes road, street, lighting, drainage, public works and such other conveniences as the Government may, by notification, specify to be an amenity for the purposes of this Act;
>
> (bb) Civic amenity means,-
>
> > (i) a market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot;
> >
> > (ii) a recreation centre run by the Government or the Corporation;

(iii) a centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government ;

(iv) a centre for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959) or a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960) or by a trust created wholly for charitable, educational or religious purposes ;

(v) a police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board ; and

(vi) such other amenity as the Government may, by notification, specify;

(c) Bangalore Metropolitan Area means the area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 (Mysore Act 69 of 1949), the areas where the City of Bangalore Improvement Act, 1945 (Mysore 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;

(j) Development with its grammatical variations means the carrying out of building, engineering, or other operations in or over or under land or the making of any material change in any building or land and includes redevelopment;

(k) Engineering operations means formation or laying out of means of access to road;

(n) Local Authority means a municipal corporation or a municipal council constituted or continued under any law for the time being in force; (o) Means of access includes any means of access whether private or public, for vehicles or for foot passengers, and includes a road;

6. Sections 14, 15, 16, 28-A, 28-B, 28-C, 32(1) to (5A), 65, 65-B 67(1)(a) and (b) of the 1976 Act are also extracted below:

> 14. Objects of the Authority.- The objects of the Authority shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of moveable and immoveable property, whether within or outside the area under its jurisdiction, to carry out building, engineering and other operations and generally to do all things necessary or expedient for the purposes of such development and for purposes incidental thereto.
>
> 15. Power of Authority to undertake works and incur expenditure for development, etc.-
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> (1) The Authority may,-
>
> > (a) draw up detailed schemes (hereinafter referred to as development scheme) for the development of the Bangalore Metropolitan Area ; and
> >
> > (b) with the previous approval of the Government, undertake from time to time any works for the development of the Bangalore Metropolitan Area and incur expenditure therefor and also for the framing and execution of development schemes.
>
> (2) The Authority may also from time to time make and take up any new or additional development schemes,-
>
> > (i) on its own initiative, if satisfied of the sufficiency of its resources, or
> >
> > (ii) on the recommendation of the local authority if the local authority places at the disposal of the Authority the necessary funds for framing and carrying out any scheme; or
> >
> > (iii) otherwise.
>
> (3) Notwithstanding anything in this Act or in any other law for the time being in force, the Government may, whenever it deems necessary require

the Authority to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by the Government.

16. Particulars to be provided for in a development scheme.- Every development scheme under section 15,-

(1) shall, within the limits of the area comprised in the scheme, provide for ,-

(a) the acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme ;

(b) laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;

(c) drainage, water supply and electricity ;

(d) the reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional area of not less than ten percent of the total area of the layout for civic amenities.

(2) may, within the limits aforesaid, provide for,-

(a) raising any land which the Authority may consider expedient to raise to facilitate better drainage;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the sanitary arrangements required ;

(3) may, within and without the limits aforesaid provide for the construction of houses.

28-A. Duty to maintain streets etc.- It shall be incumbent on the Authority to make reasonable and adequate provision by any means or measures which it is lawfully competent to use or take, for the following matters, namely,-

(a) the maintenance, keeping in repair, lighting and cleansing of the streets formed by the Authority till such streets are vested in the Corporation; and

(b) the drainage, sanitary arrangement and water supply in respect of the streets formed by the Authority.

28-B. Levy of tax on lands and buildings.-

(1) Notwithstanding anything contained in this Act, the Authority may levy a tax on lands or buildings or on both, situated within its jurisdiction (hereinafter referred to as the property tax) at the same rates at which such tax is levied by the Corporation within its jurisdiction.

(2) The Provisions of the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) shall mutatis mutandis apply to the assessment and collection of property tax.

Explanation.- For the purpose of this section property tax means a tax simpliciter requiring no service at all and not in the nature of fee inquiring service.

28-C. Authority is deemed to be a Local Authority for levy of cesses under certain Acts.- Notwithstanding anything contained in any law for the time being force the Authority shall be deemed to be a local authority for the purpose of levy and collection of,-

(i) education cess under sections 16.17 and 17A of the Karnataka Compulsory Primary Education Act, 1961 (Karnataka Act 9 of 1961);

(ii) health cess under sections 3,4 and 4A of the Karnataka Health Cess Act, 1962 (Karnataka Act 28 of 1962);

(iii) library cess under section 30 of the Karnataka Public Libraries Act, 1965 (Karnataka Act 10 of 1965); and

(iv) beggary cess under section 31 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975).

32. Forming of new extensions or layouts or making new private streets.- (1) Notwithstanding anything to the contrary in any law for the time being in force, no person 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 and except in accordance with such conditions as the Authority may specify: Provided that where any such extension or layout lies within the local limits of the Corporation, the Authority shall not sanction the formation of such extension or layout without the concurrence of the Corporation:

Provided further that where the Corporation and the Authority do not agree on the formation of or the conditions relating to the extension or layout, the matter shall be referred to the Government, whose decision thereon shall be final.

(2) Any person intending to form an extension or layout or to make a new private street, shall send to the Commissioner a written application with plans and sections showing the following particulars,-

(a) the laying out of the sites of the area upon streets, lands or open spaces;

(b) the intended level, direction and width of the street;

(c) the street alignment and the building line and the proposed sites abutting the streets;

(d) the arrangement to be made for levelling, paving, metalling, flagging, channelling, sewering, draining, conserving and lighting the streets and for adequate drinking water supply.

(3) The provisions of this Act and any rules or bye- laws made under it as to the level and width of streets and the height of buildings abutting thereon shall apply also in the case of streets referred to in sub- section (2) and all the particulars referred to in that sub-section shall be subject to the approval of the Authority.

(4) Within six months after the receipt of any application under subsection (2), the Authority shall either sanction the forming of the extension or layout

or making of street on such conditions as it may think fit or disallow it or ask for further information with respect to it.

(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 therefor.

(5A) 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 the 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.

65. Government's power to give directions to the Authority.- The Government may give such directions to the Authority as in its opinion are necessary or expedient for carrying out the purposes of this Act, and it shall be the duty of the Authority to comply with such directions.

65-B. Submission of copies of resolution and Government's power to cancel the resolution or order.-

(1) The Commissioner shall submit to the Government copies of all resolutions of the Authority.

(2) If the Government is of opinion that the execution of any resolution or order issued by or on behalf of the Authority or the doing of any act which is about to be done or is being done by or on behalf of the Authority is in contravention of or in excess of the powers conferred by this Act or any other law for the time being in force or is likely to lead to a breach of peace or to cause injury or annoyance to the public or to any class or body of persons or is prejudicial to the interests of the authority, it may, by order in writing, suspend the execution of such resolution or order or prohibit the doing

of any such act after issuing a notice to the Authority to show cause, within the specified period which shall not be less than fifteen days, why,-

(a) the resolution or order may not be cancelled in whole or in part; or

(b) any regulation or bye-law concerned may not be repealed in whole or in part.

(3) Upon consideration of the reply, if any, received from the authority and after such inquiry as it thinks fit, Government may pass orders cancelling the resolution or order or repealing the regulation or bye- law and communicate the same to the authority.

(4) Government may at any time, on further representation by the authority or otherwise, revise, modify or revoke an order passed under subsection (3).

67. Amendment of the Karnataka Town and Country Planning Act, 1961.- (1) In the Karnataka Town and Country Planning Act , 1961 (Karnataka Act 11 of 1963),-

(a) in section 2, for item (i) of sub-clause (a) of clause (7), the following item shall be substituted namely,- (i) the local planning area comprising the City of Bangalore, the Bangalore Development Authority, and;

(b) after section 81-A, the following section shall be inserted, namely,-

81-B. Consequences to ensue upon the constitution of the Bangalore Development Authority.- Notwithstanding anything contained in this Act, with effect from the date on which the Bangalore Development Authority is constituted under the Bangalore Development Authority Act, 1976 the following consequences shall ensue,-

(i) the Bangalore Development Authority shall be the local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over the area which the City Planning Authority for

> the City of Bangalore had jurisdiction immediately before the date on which the Bangalore Development Authority is constituted;
>
> (ii) the Bangalore Development Authority shall exercise the powers, perform the functions and discharge the duties under this Act as if it were a Local Planning Authority constituted for the Bangalore City;
>
> (iii) the City Planning Authority shall stand dissolved and upon such dissolution,-
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> ****

7. In exercise of the power vested in it under Section 4-A(1) of the Town Planning Act, the State Government issued Notifications dated 1.11.1965 and 13.3.1984 declaring the areas specified therein to be the Local Planning Areas. By the first notification, the State Government declared the area comprising the city of Bangalore and 218 villages enumerated in Schedule I thereto to be the Local Planning Area for the purposes of the Town Planning Act and described it as the Bangalore City Planning Area. The limits of the planning area were described in Schedule II appended to the notification. By the second notification, the area comprising 325 villages around Bangalore (as mentioned in Schedule I) was declared to be the Local Planning Area for the environs of Bangalore. The limits of the city planning area were indicated in Schedule II. At the end of Schedule II of the second notification, the following note was added:

> This excludes the Bangalore City Local Planning Area declared (by) Government Notification No. PLN/42/MNP/65/SO/3446 dated 1-11-1965.

8. A third notification was issued on 6.4.1984 under Section 4- A(3) of the Town Planning Act amalgamating the Local Planning Areas of Bangalore declared under the earlier two notifications as Bangalore City Planning Area w.e.f. 1.4.1984.

9. On 1.3.1988, the State Government issued notification under Section 2(c) of the 1976 Act specifying the villages indicated in the first Schedule and within the boundaries indicated in the second Schedule to Notification dated 13.3.1984 to be the areas for the purposes of that clause. We shall refer to this notification a little later in the context of the High Court's negation of the respondents' challenge to that notification on the ground that the names of the villages or specified areas had not been published in the Official Gazette and, as such, the layout plans of the area comprised in those villages are not governed by the 1976 Act.

10. As a result of unprecedented increase in the population of the city of Bangalore between 1970 and 1980, the available civic amenities like roads, water supply system and supply of electricity were stretched to their limit. To meet the additional requirement of water and electricity and to tackle the problems of traffic, new schemes were prepared in the development plan of Bangalore city, which was approved in 1984. These included augmentation of water supply, formation of Ring Road etc. Bangalore Water Supply and Sewerage Board (BWSSB) submitted a proposal to the State Government for taking up of Cauvery Water Supply Scheme, Stage III (for short, `the Cauvery Scheme') for supply of an additional 270 MLD water to Bangalore at a cost of Rs. 240 crores. The proposed financing pattern of the project was as follows:

(i) State Government - Rs.80/- crores,

(ii) Life Insurance Corporation of India - Rs. 50/- crores,

(iii) Bangalore City Corporation - Rs. 30/- crores, and

(iv) World Bank - Rs. 80/- crores.

11. By an order dated 28.06.1984, the State Government, after taking cognizance of the difficulties being experienced by BWSSB in supplying water to the Bangalore Metropolitan Area and the possibility of acute shortage of water in next 10 years if the supply was not augmented, granted approval to the Cauvery Scheme.

12. Since the World Bank assistance was expected only in the year 1988 and the Cauvery Scheme was to be implemented by 1990 to meet the drinking water needs of the residents of Bangalore, the issue was discussed in the meeting held on 01.01.1987 under the chairmanship of the Chief Secretary of the State and it was decided that with a view to avoid escalation in the cost, the funds may be collected from other sources including the BDA because substantial quantity of water was required for the layouts which were being developed by it or likely to be developed in future. In furtherance of that decision, the State Government issued order dated 25.03.1987 and directed the BDA to make a grant of Rs. 30 crores to BWSSB to be paid in installments from 1987-88 to 1989-90 by loading an extra amount as water supply component at the rate of Rs. 10,000/- on an average per site for all the layouts to be formed thereafter.

13. In compliance of the directions given by the State Government, the BDA started collecting Rs.10,000/- per site. Later on, the levy under the Cauvery Scheme was increased to Rs.1 lac per acre. By 1992, it was realised that the BDA had not been able to develop and distribute sites as expected.

> Therefore, a proposal was submitted by the Commissioner, BDA to the State Government that contribution towards the Cauvery Scheme may be distributed among those applying for change of land use and the private layouts to be developed by the house building societies and on major housing projects. The State Government accepted the suggestion of the BDA and passed order dated 12.1.1993 for the levy of charges under the Cauvery Scheme at the rate of Rs.2 lacs per acre.

14. In 1992, the BDA also decided to take up the construction of 63.30 kilometers long Outer Ring Road and 3.5 kilometers long Intermediate Ring Road at an estimated cost of Rs.115 crores with a possible escalation up to Rs.130 crores. 36.24 kilometers of the Outer Ring Road was to pass through the BDA layouts and the balance was to pass through the land outside the BDA layouts. The cost of construction of Outer Ring Road passing through the BDA layout was to be met by charging the allottees of sites in the BDA layouts. For the balance 27.06 kilometers of Outer Ring Road and 3.5 kilometers of Intermediate Ring Road a proposal was prepared to obtain financial assistance from the World Bank. In the meeting held on 5.6.1992 under the chairmanship of the Chief Secretary of the State, the possibility of taking loan from HUDCO was explored. Simultaneously, it was considered whether partial burden of the cost could be passed on to the beneficiaries of the private layouts and it was agreed that like the Cauvery Scheme, Ring Road surcharge should be levied on the sites to be formed by the BDA and the private housing societies at the rate of Rs.1 lac per acre. Thereafter, the BDA passed Resolution dated 19.10.1992 for levy of charges at different rates on change of land use in different areas and Rs.1 lac per acre on the layouts of housing societies and private lands as also the sites formed by itself.

15.The Air Craft Employees Cooperative Society Ltd. (respondent in C.A. No.7503/2002) submitted an application for approval of layout in respect of 324 acres 30 guntas land situated in Singasandra and Kudlu villages, Surjapur Hobli and Begur Hobli respectively. The application of the respondent was considered in the BDA's meeting held on 31.10.1991 and was approved subject to various conditions including payment of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge. Another condition incorporated in the Resolution of the BDA was that the civil portion of work shall be carried out by

the respondent under its supervision. The decision of the BDA was communicated to the respondent vide letter dated 12.11.1992.

16. The respondent challenged the conditional sanction of its layout in Writ Petition No.11144/1993 and prayed for quashing the demand of Rs.2 lacs per acre towards the Cauvery Scheme and Rs.1 lac as Ring Road surcharge by making the following assertions:

(i) The order passed by the State Government was applicable only to the sites to be formed by the BDA and not the layout of private House Building Societies because as per the Chairman of BWSSB, it will not be possible to take up the responsibility of providing water supply and underground drainage to such layouts and the societies had to make their own arrangements.

(ii) The Cauvery Scheme will be able to meet the requirements of only the citizens residing within the municipal area and some newly formed layouts adjacent to the city.

(iii) There is no provision in the Bangalore Water Supply and Sewerage Act, 1964 (for short, `the 1964 Act') under which the burden of capital required for the execution of schemes could be passed on to the private House Building Societies and, in any case, the BWSSB can recover the cost by resorting to Section 16 of the 1964 Act.

(iv) Under the 1976 Act, the Government is not empowered to authorise the BDA to transfer the cost of the Cauvery Scheme to the private layouts.

(v) 20,000 acres of land has been acquired by the BDA for forming layouts in the vicinity of Bangalore and 10,000 acres had been acquired by the Government for House Building Cooperative Societies and if Rs.1 or 2 lacs per acre are charged, the Government will collect about Rs.600 crores from the BDA itself, though the latter's contribution was initially fixed at Rs.30 crores only.

(vi) The demand of Rs.1 or 2 lacs per acre towards the Cauvery Scheme is ultra vires the provisions of Article 265 of the Constitution.

(vii) The levy of Rs.1 lac per acre as Ring Road surcharge is not sanctioned by law and the State and the BDA cannot burden the private layouts without

determining whether the Ring Road would be of any use to the members of the House Building Societies.

17. During the pendency of Writ Petition No.11144/1993, the State legislature amended the 1976 Act by Act. No.17/1994 and inserted sub-section (5A) in Section 32 w.e.f. 20.6.1987 authorising the BDA to demand sums in addition to those referred in sub-section (5) to meet the expenditure towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities within the Bangalore Metropolitan area.

18. The respondent promptly amended the writ petition and challenged the constitutional validity of the newly inserted sub-section by asserting that the provision is discriminatory and violative of Article 14 of the Constitution because it gives unbridled and uncanalized power to the BDA to demand additional sums for different schemes. It was also pleaded that sub-section (5A) has been inserted in Section 32 to legitimize the conditions incorporated in letter dated 12.11.1992 for payment of charges for the Cauvery Scheme and the Ring Road.

19. While the parties were litigating on the constitutionality of the amended provision and legality of the conditional sanction of the layout, the respondent applied for approval of the BDA for starting civil work. The same was sanctioned subject to payment of the following charges:

(i) Supervision Charges Rs. 92,26,687.00 (at the rate of 9% on Civil Work)

(ii) Improvement charges Rs. 1,65,95,008.00 (at the rate of Rs. 20 per sq. mtrs.)

(iii) Examination charges Rs. 4,14,876.00 (0-50 per sq. mtrs.)

(iv) Slum Clearance Development Rs. 20,74, 365.00 Charges (Rs. 25,000 per hectare)

(v) M.R.T.S. Tax Rs. 1,02,51, 875.00 (Rs. 50,000 per acre)

(vi) Miscellaneous Rs. 7,189.00

20. The respondent challenged the conditional approval of civil work in Writ Petition No. 25833/1998 on the ground that the 1976 Act does not authorize such levies and that the legislature has not laid down any guideline for creating such

demand from the private House Building Societies. An additional plea taken by the respondent was that the BDA has applied the provisions of Section 32 of the 1976 Act under a mistaken impression that the layout was within its jurisdiction. According to the respondent, no notification had been issued by the State Government for including the villages of North and South Talukas within the Bangalore Metropolitan Area. Another plea taken by the respondent was that the State Government has already collected conversion fine and, as such, the BDA does not have the jurisdiction to levy betterment fee. Similar plea was raised in respect of Mass Rapid Transport System Cess and the Slum Clearance charges.

21. The other House Building Cooperative Societies also filed writ petitions between 1994 and 1998 for striking down Section 32(5A) and the conditional sanction of their layouts in terms of which they were required to pay for the Cauvery Scheme and the Ring Road apart from other charges mentioned in the sanction of civil work as was done in the case of Air Craft Employees Cooperative Society Limited. They generally pleaded that:

> i. the BDA has no jurisdiction to make demands requiring payment of sums under various heads in the matter of sanction of the residential layout plan as areas of their layouts do not form part of the Bangalore Metropolitan Area;
>
> ii. the notification issued under Sec. 2(c) of the 1976 Act is not valid as there is no specification of the adjacent areas; iii. 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 were sought to be declared and specified as part of the Bangalore Metropolitan Area and the specifications and schedules referred to in the notification have not been published;
>
> iv. the villages which include the lands that form a part of the residential layouts also do not figure in the schedule to Notification dt. 13.3.1984.

22. The writ petitions were contested by the appellant by making the following assertions:

> i. the lands of the respondents' residential layout fall within the local planning area of the authority and, therefore, they are liable to pay layout charges in respect of the Cauvery Scheme, Ring Road surcharge, slum clearance charge, betterment levy, scrutiny fee, supervision charges, etc. ii. the charges have been levied in terms of the directions given by the State Government and the decision taken by the BDA.

iii. the societies are required to carry out civil work under the supervision of the BDA and, therefore, they are liable to pay supervision charges.

iv. Section 32(5A) of the 1976 Act does not suffer from any constitutional infirmity and guidance for levy of such charges can be traced in the scheme of the Act.

23. The Division Bench of the High Court first considered the question whether Notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act was invalid because the names of the villages or the specified area had not been notified or published in the Official Gazette and whether in the absence of such notification, the villages in which the societies had formed layouts cannot be treated as part of the Bangalore Metropolitan Area. The Division Bench referred to the definition of the expression Bangalore Metropolitan Area contained in Section 2(c) of the 1976 Act, the contents of Notification dated 1.3.1988 and held that the description of the area given in the notification was in consonance with the definition of the Bangalore Metropolitan Area because reference had been made to the villages in Schedule I to Notification dated 13.3.1984 and the boundaries of the planning environs area as per Schedule II of the said notification. The Division Bench opined that if Notifications dated 13.3.1984 and 1.3.1988 are read together, it cannot be said that the particular villages do not form part of the Bangalore Metropolitan Area.

24. The Division Bench did not decide the plea of the respondents that some of the villages were not included in the Schedules by observing that determination of this question involves investigation into a question of fact and this can be considered at the time of approval of the layout plan of the particular society.

25. The argument that while dealing with the issue raised in Writ Petition No.13907/1995, the BDA had lost the territorial jurisdiction because the areas in question had become part of City Municipal Council, Byatarayanapura and City Municipal Council, Krishnaraja Puram respectively vide Notification dated 22.1.1996 was left to be decided by the BDA with liberty to the concerned respondent to raise the same at an appropriate stage.

26. The Division Bench then adverted to Articles 265 and 300A of the Constitution and held that the BDA cannot levy or recover the sums specified in the demand notice on the basis of the government order or circular. The Division Bench further held that the approval of layout plan or work order cannot be made subject to the

condition of deposit of the sum demanded by it. The Division Bench then analysed the provisions of Section 32 of the 1976 Act and observed:

> No principle appears to have been laid down or indicated for the authority to be kept in view and followed when determining in such portion of the expenditure, which expenditure have to relate 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 know 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 guideline. There are no rules framed under the Act with reference to subsection (5-A) of Section 32 of the Bangalore Development Authority Act, 1976 to provide guidelines 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 the concerned persons or 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 thereunder.

27. The Division Bench relied upon the ratio in Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. AIR 1958 SC 538, Jyoti Pershad v. The Administrator for The Union Territory of Delhi, AIR 1961 SC 1602; Devi Das Gopal Krishnan v. State of Punjab, AIR 1967 SC 1895, State of Kerala v. M/s. Travancore Chemicals and Manufacturing Company (1998) 8 SCC 188 and observed:

> In the present case, sub-section (5-A) of Section 32 of the Act, does not appear to provide any guidelines 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 guidelines in this regard. It does not provide the portion of the amount the applicant maybe 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 unbridle powers without providing any guide lines or guidance in that regard. The section also does not provide any remedy against the order of authority under Section 32(5) of the Act.

The learned counsel for the respondents contended that there is remedy against the order of the authority under Section 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 obstante 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 maybe deprived of their properties in the form of money by the exercise of sweet will and the 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 Sri Rama Krishna Dalmia's case reported in A.I.R.1958 Supreme Court 538 and Shri Jyothi Pershad's case reported in A.I.R. 1961 Supreme Court 1602. 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 hit by Article 14 of the Constitution.

28. The Division Bench finally concluded that the demand made by the BDA with the support of Section 32(5A) is illegal and without jurisdiction and accordingly allowed the writ petitions.

29. At this stage, it will be appropriate to mention that during the course of hearing on 2.9.2009, Shri Dushyant Dave, learned senior counsel appearing for one of the respondents stated that a sum of Rs.300 crores (approximately) has been collected by the BDA from the House Building Societies in lieu of sanction of their layouts and substantial amount from the allottees of the sites of the layouts developed by it between 1984-1992 and this, by itself, was sufficient to prove that the exercise of power by the BDA under Section 32 (5A) of the 1976 Act is arbitrary. After considering the statement made by Shri Dave, the Court directed the

Commissioner and/or Secretary of the BDA to file a detailed and specific affidavit giving the particulars of contribution made by the BDA towards the Cauvery Scheme and the amount demanded and/or collected from those who applied for sanction of the private layouts as also the allottees of the sites in the BDA layouts. In compliance of the Court's direction, Shri Siddaiah, the then Commissioner, BDA, filed affidavit dated 11.11.2009, paragraphs 2 to 5 of which are extracted below:

> 2. The Government of Karnataka formed the Cauvery Water IIIrd Stage Scheme in 1984. However, the Government directed the Bangalore Development Authority to contribute Rs. Thirty crores towards the Cauvery Water IIIrd Stage Scheme by its order No. HUD 97 MNI 81, Bangalore dated 25th March, 1987. The Bangalore Development Authority started collecting Cauvery Water Cess from 1988. However, the Government by its order No. UDD 151 Bem.Aa.Se 2005, dated 03.05.2005 directed the Bangalore Development Authority to stop collection of the Cauvery Water Cess and Ring Road Cess and MRTS Cess. A copy of the order of the Government Order dated 03.05.2005 directing not collect any cess referred above is produced herewith as Annexure-`A'. The BDA has charged and collected the Cauvery water cess between 1988 and 2005. The Cauvery Water cess collected by the BDA is periodically transferred to the Bangalore Water Supply and Sewerage Board (BWSSB). The chart showing year wise payments made to BWSSB towards the Cauvery Water Cess from 1988 till 2005 is produced herewith as Annexure-`B'. The payment chart shows the amount collected towards the Cauvery Water Cess and paid to BWSSB. The chart shows that a total sum of Rs. 34.55 crores are collected from 1988 to April 2005. The sum of Rs.34.55 crores collected is in respect of both private layouts as well as Bangalore Development Authority sites. The entire money collected towards the Cauvery Water Cess has been paid to the Bangalore Water Supply Sewerage Board, Bangalore as stated above.
>
> 3. Similarly, the collection towards the Ring Road Cess from the year 1992-93 and the collections were made up to 2005-06. The total sum collected is Rs.15.15 crores. The year-wise chart showing the collection of Ring Road Cess is produced herewith as Annexure-`C'. The Ring Road Cess is collected only from the private layouts.
>
> 4. With regard to certain averments made in W.P. No. 11144/1993 with regard to estimated collection of Cauvery Water Cess, it is submitted that the estimates are far from accurate. It is just a guess work. The averments made

therein that the Government has acquired around 10,000 acres towards the private societies will not be within the knowledge of the Bangalore Development Authority, because the Government does not seek the opinion or consent of BDA before acquiring land for a private layout. The private layouts within the limits of BDA have to apply to BDA for approval of a private under Section 32 of BDA Act. From 1984 till 2005, 194 applications for approval of private layouts were received and were approved by the Bangalore Development Authority involving about an extent of 5668 acres and 15 3/4th gunthas (five thousand six hundred and sixty-eight acres and fifteen and three fourth gunthas). However, Cauvery Water Cess and Ring Road Cess are levied and collected as stated above from 1988 and 2005 respectively. The submissions made in the Writ Petition to the contrary are speculative.

5. Similarly, the averments in the W.P. that the Bangalore Development Authority would collect about 300 crores are speculative. It is submitted with respect after the directions of the Government in 2005, all the above collections have been stopped. Hence, this affidavit.

BANGALORE DEVELOPMENT AUTHORITY BANGALORE

THE COLLECTION OF CAUVERY WATER CESS PAID TO BWSSB AS MENTIONED BELOW (INR in Lakh)

SL NO CHEQUE NO. DATE AMOUNT 1 FROM FEB 1988 TO APRIL 1992 2,130.00 2 705908 02.11.1996 150.00 3 718093 21.01.1997 100.00 4 737303 15.03.1997 100.00 5 753086 06.07.1997 100.00 6 756449 30.12.1997 150.00 7 650002 18.03.1998 50.00 8 759664 20.07.1998 50.00 9 502441 22.01.1999 50.00 10 769862 15.09.1999 75.00 11 653066 04.06.2005 500.00 TOTAL 3,455.00 (Rupees Thirty Four Crores and Fifty Five Lakh) Sd/-

Accounts Officer BDA,

Bangalore

ANNEXURE-II

YEAR WISE RING ROAD CESS (INR in Lakh)

YEAR COLLECTIONS CHARGED TO RING BALANCE ROAD EXPEND.

1992-93 63.39 63.39 - (Feb 93 on wards)

1993 -94 183.89 183.89 -1994-95 217.87 217.87 - 1995-96 331.14 331.14 - 1996-97 162.08 162.08 - 1997-98 180.79 180.79 - 1988-99 84.23 84.23 - 1999-00 50.49 50.49 - 2000-01 19.48 19.48 - 2001-02 0.30 0.30 - 2002-03 7.34 7.34 - 2003-04 - - - 2004-05 - - - 2005-06 214.27 214.27 - TOTAL 1,515.27 1,515.27

Letter dated 03.05.2005 of the State Government, which is enclosed with the affidavit of Shri Siddaiah, is also reproduced below:

GOVERNMENT OF KARNATAKA UDD.151.BAN.2005 Karnataka Secretariat Multistoried Building

Bangalore

Dated: 03.05.2005

Sub: Ring Road Cess, Augmentation Cess (Cauvery Water Cess) MRTS Cess.

Ref: Government Circular No. 249 of 2001 dated 20.09.2003.

In the above circular referred above, the Government has withdrawn all earlier orders and decided that henceforth Ring Road Cess, Augmentation Cess (Cauvery Water Cess) MRTS Cess should not be levied. Even so some Corporations, Municipalities and Authorities are charging the above cess.

Therefore, until a decision is taken at the level of the Government about the above stated subject and until further directions, Ring Road Cess, Augmentation Cess (Cauvery Water Cess) MRTS Cess should not be charged. Hence this order. Sd/-03.05.2005

(V.R. Ilakal)

Addl. Secretary, Govt. of Karnataka

Urban Development

30.Thereafter, Shri Anand R.H., President of the Bank Officers and Officials House Building Cooperative Society Limited filed detailed affidavit dated 08.03.2010, paragraphs 2 to 7 whereof are reproduced below:

> 2. I submit that this Hon'ble Court by order dated 02.09.2009 had directed the Commissioner and/or Secretary of Appellant Bangalore Development Authority (BDA for short) to file a detailed and specific affidavit stating therein the total contribution made by the BDA towards Cauvery Water Supply Scheme Stage III and the amount demanded and/or collected from those who applied for sanction of private layouts as also the allottees of the sites in the layouts prepared by the BDA itself.
>
> 3. I say that the BDA has deliberately not at all disclosed the material facts:
>
> > i) the total number of the Housing Societies and others who applied for sanction of layouts including private layouts;
> >
> > ii) the amount BDA has demanded from the Housing Societies and others who have applied for sanction of layouts and private layouts;
> >
> > iii) the total number of sites formed in the layouts formed by the BDA and allotted to the public;
> >
> > (iv) the total amount demanded and collected from the allottees of the sites in the layouts formed by BDA itself;
> >
> > v) as per Government order dated 25.03.1987 the BDA was empowered to levy and collect amount towards the Cauvery Water Supply Scheme also from the Applicants who apply for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts. The BDA has not disclosed the details of such Applicants or the amount recovered from them in terms of the Government order dated 25.03.1987.
>
> 4. I say that in the affidavit under reply the BDA has stated that it has approved layouts involving about an extent of 5668 acres and 15 > guntas from 1984 till 2005. The extent of area involved in respect of each of the

Societies is more than 10 acres in each layout. In terms of the Government Order the BDA has demanded towards the Cauvery Water Supply Scheme at the rate of Rs. 3,00,000/- (Rupees Three Lakhs Only) per acre. Therefore, at a conservative estimate the BDA has raised demand of more than Rs. 170/- crores (5668 x Rs. 3 lakhs). This amount pertains to only Housing Societies. As stated above the BDA has not disclosed the total number of layouts formed by it and the total number of site allotted in the said layouts to its allottees. I say that the BDA has in its officials site http://www.bdabangalore.org/layout.htm has furnished the layout information till 2007 which information has been downloaded from the internet by the deponent. As per the information published by the BDA itself it has formed 62 layouts and has made allotments of about 2 lakh sites to general public. It is also stated therein that in the last one decade more than 10 new layouts have been added to the growing city of Bangalore by BDA as under:

A. BANASHANKARI 6TH STAGE

> 7 743 acres land acquired for phase-3 Banashankari 6th Stage and Anjanapura Further Extension in Uttarahalli Hobli, Bangalore South Taluk, 5000 sites allotted in September 2002.

B. BANASHANKARI 6TH STAGE FURTHER EXTENSION

> 7 750 acres land acquired in Uttarahalli Hobli, Bangalore South Taluk, 5800 allotted during January 2004.

C. SIR. M. VISWESHWARAYA LAYOUT

> 7 1337 acres and 22 guntas of land acquired for SMV Layout allotted 10,000 sites during March 2003.

D. SIR. M. VISWESHWARAYA LAYOUT FURTHER EXTENSION

> 7 510 acres land acquired, 4200 allotted during January, 2004. It is near Kengeri Hobli.

E. HSR Layout is on the South-Eastern part of the city closer to Electronic City and Outer Ring Road. It is one among the prestigious layouts of BDA.

A total of 9900 sites have been allotted in HSR Layout during 1986 to 88, 92, 95 and 99.

F. Sir. M. Visweswaraya Nagar Layout is in the Western part of the city. In SMV Layout we have allotted 17, 624 sites

6 x 9 - 4445

9 x 12 - 7368

12 x 18 - 4167

15 x 24 - 1644

G. In SMV Further Extension we have allotted 3615 sites.

In Anjanpura Further Extension we have allotted 7340 sites

6 x 9 - 1835

9 x 12 - 3305

12 x 18 - 1335

15 x 24 - 365

H. In Arkavathi Layout, in the 1st Phase 1710 sites and in the 2nd phase 8314 sites of different dimensions. A total of 3664 (30x40) dimension sites have been allotted totally at the rate of Rs. 2100 sq. mtrs.

S.No Name of the Location No. of sites formed layout Intermediate Corner Total No. of sites allotted

1 BSK 6th Stage South part of 15520 2379 17899 15520 2 the city with 5175 816 5991 5175 approach road from Kengeri Road 3 Anjanapura South part of 5424 829 6253 5424 Township 1 to 8th the city with 4340 683 5023 4340 Block approach 4 road from Kanakapura Road.

Biggest Layout formed in recent years 5 SMV Layout West part of 9696 1764 11460 9696 6 SMV further the city with 3615 650 4265 3615

extension approach 20000 8600 28600 8813 7 Arkavath road from Nagarabhavi Road True copy of the layout information published by BDA in its official website: http://www.bdabangalore.org/layout.htm as at 2007 is filed as ANNEXURE A-1 to this affidavit. The true typed copy of Annexure A-1 is filed as ANNEXURE A- 2.5. I say that if the total number of sites allotted by the BDA in the layout formed by it if taken as 2 lakhs sites as stated in the BDA publication the amount levied and collected by BDA from such allottees will come to Rs. 200 crores (2,00,00,000 x Rs. 10,000/-).

As stated in the BDA publication in the last decade itself more than 73503 sites have been allotted by the BDA in the layouts formed by itself. The amount levied and collected by the BDA from these allottees in the last one decade at the rate of Rs. 10,000/- per site in terms of the Government Order dated 25.03.1987 towards the Cauvery Water Supply Scheme itself will come to Rs. 73,50,30,000/- (Rs.10,000 per site x 73503 sites).

6. I say that apart from the amount levied and collected by BDA from the above mentioned Applicants, the BDA must have collected the amount towards the Cauvery Water Supply Scheme from the Applicants who applied for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts at the rate as prescribed in the Government Order dated 25.03.1987.

7. I say that the facts and figures disclosed above is based on the averments made in the affidavit filed by BDA and the information official from the official website of BDA http://www.bdabangalore.org/layout.htm and I believe the same to be correct. Therefore, it is apparent that the BDA has demanded more than Rs.370 crores from the societies whose layouts have been approved by BDA (Rs. 170 crores) and from its allottees (Rs. 200 crores) excluding the Applicants who applied for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts.

I say that apart from the fact that the BDA is not empowered to levy and collect the amount towards Cauvery Water Supply Scheme and without prejudice to the submission that the provisions of Section 32(5-A) of the BDA Act is ultra vires the Constitution and without prejudice to rights and contentions raised in the Civil Appeal even assuming that the BDA could levy and collect the amount towards Cauvery Water Supply Scheme, the BDA could collect only Rs. 30

> crores. The BDA has however demanded the payment towards Cauvery Water Supply Scheme in excess of over Rs. 370 crores from the Housing Societies and its own allottees apart from the demand made from the Applicants who applied for change in land use and for formation of Group Housing/other major developments and for formation of Private Layouts which facts have not been disclosed by the BDA. The entire information pertaining to the demand and collection of the funds towards Cauvery Water Supply Scheme is available with BDA but has been deliberately withheld. In any event even according to the affidavit filed by the BDA it has collected Rs.34.55 crores as against the limit of Rs. 30 crores which it could collect under the Government Order. Therefore, the amount collected is far in excess of its limit. On this ground also the demand raised against the Respondent Societies is illegal and without authority of law.

31. We shall first deal with the question whether the area in which the respondents have formed layouts fall within the Bangalore Metropolitan Area. In the impugned order, the Division Bench has recorded brief reasons for negating the respondents' challenge to Notification dated 1.3.1988. The conclusion recorded by the Division Bench and similar view expressed by another Division Bench of the High Court in the Commissioner, Bangalore Development Authority v. State of Karnataka ILR 2006 KAR 318 will be deemed to have been approved by the three Judge Bench of this Court in Bondu Ramaswamy v. Bangalore Development Authority (2010) 7 SCC 129, which referred to Notifications dated 1.11.1965 and 13.3.1984 issued under Section 4A(1) of the Town Planning Act and Notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act and observed:

> A careful reading of the Notification dated 1-3-1988 would show that the clear intention of the State Government was to declare the entire area declared under the Notification dated 1-11-1965 and the Notification dated 13-3-1984, together as the Bangalore Metropolitan Area. The Notification dated 1-3-1988 clearly states that the entire area situated within the boundaries indicated in Schedule II to the Notification dated 13-3-1984 was the area for the purpose of Section 2(c) of the BDA Act. There is no dispute that the boundaries indicated in Schedule II to the Notification dated 13-3-1984 would include not only the villages enumerated in First Schedule to the Notification dated 13-3-1984 but also the area that was declared as planning area under the Notification dated 1-11-1965. This is because the areas declared under Notification dated 1-11-1965 are the core area (Bangalore

City) and the area surrounding the core area that is 218 villages forming the first concentric circle; and the area declared under the Notification dated 13-3- 1984 (325 villages) surrounding the area declared under the Notification dated 1-11-1965 forms the second concentric circle. Therefore, the boundaries of the lands declared under the Notification dated 13-3-1984, would also include the lands which were declared under the Notification dated 1-11-1965 and therefore, the 16 villages which are the subject- matter of the impugned acquisition, are part of the Bangalore Metropolitan Area.

The learned counsel for the appellants contended that the note at the end of Second Schedule to the Notification dated 13-3-1984 excluded the Bangalore City Planning Area declared under the Notification dated 1-11-1965. As the planning area that was being declared under the Notification dated 13-3-1984 was in addition to the area that was declared under the Notification dated 1-11-1965, it was made clear in the note at the end of the Notification dated 13-3-1984 that the area declared under the Notification dated 1-11-1965 is to be excluded. The purpose of the note was not to exclude the area declared under the Notification dated 1-11-1965 from the local planning area. The intention was to specify what was being added to the local planning area declared under the Notification dated 1-11-1965. But in the Notification dated 1-3-1988, what is declared as the Bangalore Metropolitan Area is the area, that is, within the boundaries indicated in Schedule II to the Notification dated 13-3-1984, which as noticed above is the area notified on 1-11-1965 as also the area notified on 13-3-1984. The note in the Notification dated 13-3-1984 was only a note for the purposes of the Notification dated 13-3-1984 and did not form part of the Notification dated 1-3-1988. There is therefore no doubt that the intention of the State Government was to include the entire area within the boundaries described in Schedule II, that is, the area declared under the two Notifications dated 1-11-1965 and 13-3-1984, as the Bangalore Metropolitan Area.

In fact ever since 1988 everyone had proceeded on the basis that the Bangalore Metropolitan Area included the entire area within the boundaries mentioned in Schedule II to the Notification dated 13-3-1984. Between 1988 and 2003, BDA had made several development schemes for the areas in the first concentric circle around Bangalore City (that is, in the 218 villages described in First Schedule to the Notification dated 1-11-1965) and the State Government had sanctioned them. None of those were challenged on the ground that the area was not part of Bangalore Metropolitan Area. The Bench then considered the argument that the language of notification dated

1.3.1988 cannot lead to a conclusion that the areas specified in the Schedule were made part of the Bangalore Metropolitan Area, referred to the doctrine of casus omissus, the judgment of the Constitution Bench in Padma Sundara Rao v. State of T. N. (2003) 5 SCC 533 and proceeded to observe: Let us now refer to the wording and the ambiguity in the notification. Section 2(c) of the BDA Act makes it clear that the city of Bangalore as defined in the Municipal Corporation Act is part of Bangalore Metropolitan Area. It also makes it clear that the areas where the City of Bangalore Improvement Act, 1945 was in force, is also part of Bangalore Metropolitan Area. It contemplates other areas adjacent to the aforesaid areas being specified as part of Bangalore Metropolitan Area by a notification. Therefore, clearly, the area that is contemplated for being specified in a notification under Section 2(c) is other areas adjacent to the areas specifically referred to in Section 2(c). But it is seen from the Notification dated 1-3-1988 that it does not purport to specify the such other areas adjacent to the areas specifically referred to in Section 2(c), but purports to specify the Bangalore Metropolitan Area itself as it states that it is specifying the areas for the purpose of the said clause. If the notification specifies the entire Bangalore Metropolitan Area, the interpretation put forth by the appellants that only the villages included in Schedule I to the Notification dated 13-3-1984 would be the Bangalore Metropolitan Area, would result in an absurd situation. Obviously the city of Bangalore and the adjoining areas which were notified under the City of Bangalore Improvement Act, 1945 are already included in the Bangalore Metropolitan Area and the interpretation put forth by the appellants would have the effect of excluding those areas from the Bangalore Metropolitan Area.

As stated above, the core area or the inner circle area, that is, Bangalore City, is a part of Bangalore Metropolitan Area in view of the definition under Section 2(c). The 218 villages specified in the Notification dated 1-11-1965 are the villages immediately surrounding and adjoining Bangalore City and it forms the first concentric circle area around the core area of Bangalore City. The 325 villages listed in First Schedule to the Notification dated 13-3-1984 are situated beyond the 218 villages and form a wider second concentric circle around the central core area and the first concentric circle area of 218 villages. That is why the Notification dated 1-3-1988 made it clear that the Bangalore Metropolitan Area would be the area within the boundaries indicated in Second Schedule to the Notification dated 13-3-1984. It would mean that the three areas, namely, the central core area, the adjoining 218 villages constituting the first concentric circle area and the

> next adjoining 325 villages forming the second concentric circle are all included within the Bangalore Metropolitan Area. What is already specifically included by Section 2(c) of the BDA Act cannot obviously be excluded by Notification dated 1-3-1988 while purporting to specify the additional areas adjoining to the areas which were already enumerated. Therefore, the proper way of reading the Notification dated 1-3- 1988 is to read it as specifying 325 villages which are described in the First Schedule to the Notification dated 13-3-1984 to be added to the existing metropolitan area and clarifying that the entire areas within the boundaries of Second Schedule to the Notification dated 13-3-1984 would constitute the Bangalore Metropolitan Area. There is no dispute that the boundaries indicated in the Notification dated 13-3-1984 would clearly include the 16 villages which are the subject-matter of the acquisition.

32. In view of the judgment in Bondu Ramaswamy v. Bangalore Development Authority (supra), we hold that the villages specified in the schedules appended to Notifications dated 1.11.1965 and 13.3.1984 form part of the Bangalore Metropolitan Area. The question whether the BDA has lost territorial jurisdiction over the area in which the House Building Societies have formed layouts need not be decided because the learned counsel for the respondents did not challenge the observations made by the Division Bench of the High Court.

33. We shall now consider the following core questions:

> (1) whether Section 32(5A) of the 1976 Act is violative of Article 14 of the Constitution;
>
> (2) whether Section 32(5A) of the 1976 Act suffers from the vice of excessive delegation of legislative power; (3) whether the demand of charges under the Cauvery Scheme etc. amounts to tax and is, therefore, ultra vires the provisions of Article 265 of the Constitution; and
>
> (4) whether the BDA has collected charges from the house building societies and the allottees of sites of the layouts prepared by it far in excess of its contribution towards the Cauvery Scheme, MRTS, etc.

Question (1)

> 34. Shri Altaf Ahmed, learned senior counsel appearing for the BDA and Shri Sanjay R. Hegde, learned counsel for the State of Karnataka argued that

> Section 32(5A) is not violative of Article 14 of the Constitution inasmuch as it does not operate unequally qua the allottees of the sites of the layouts prepared by the house building societies on the one hand and the BDA layouts on the other hand. Learned counsel emphasised that the allottees of sites in the BDA layouts which were carved out after 20.06.1987 have been burdened with the liability to pay charges for the Cauvery Scheme as well as Ring Road and no discrimination has been practiced between the two sets of allottees. Learned senior counsel Shri Altaf Ahmed submitted that even otherwise there is no comparison between the BDA layouts which were formed by spending substantial public funds and the private layouts prepared by the house building societies. Learned counsel referred to the additional affidavit of Shri Siddaiah to show that Rs. 34.55 crores were collected by the BDA between 1988 and 2005 both from the private layouts as well as the BDA sites and the entire amount has been paid to BWSSB in lieu of the BDA's share in the Cauvery Scheme.

35. Shri K.K. Venugopal and Shri P. Vishwanatha Shetty, learned senior advocates and Shri R.S. Hegde and other learned counsel appearing for the respondents supported the conclusion recorded by the High Court that Section 32(5A) is violative of Article 14 of the Constitution by emphasizing that the impugned provision has resulted in hostile discrimination between the allottees of sites in the layouts of the house building societies and other people living in the Bangalore Metropolitan Area.

> Learned counsel submitted that while the benefit of the Cauvery Scheme, Ring Road, etc. will be availed by all the residents of the Bangalore Metropolitan Area, the cost of amenities have been loaded exclusively on the allottees of the sites of the private layouts and to some extent the BDA layouts and in this manner similarly situated persons have been discriminated. Shri Venugopal referred to the averments contained in paragraphs 4 to 6 of the amendment application filed in Writ Petition No. 11144/1993 to drive home the point that the BDA has loaded its share towards the Cauvery Scheme and Ring Road exclusively on the allottees of the private layouts leaving out the remaining population of the Bangalore Metropolitan Area.

36. In our view, the High Court committed serious error by recording a finding that Section 32(5A) is discriminatory and violative of Article 14 of the Constitution. While deciding the issue relating to constitutionality of the Section, the High Court overlooked the well-established principle that a statutory provision is presumed to

be constitutionally valid unless proved otherwise and burden lies upon the person who alleges discrimination to lay strong factual foundation to prove that the provision offends the equality clause enshrined in the Constitution.

37. In Charanjit Lal Chowdhuri v. Union of India (1950) 1 SCR 869, this Court enunciated the rule of presumption in favour of constitutionality of the statute in the following words: Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and, while examining it, two principles have to be borne in mind :- (1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself; (2) that it is the accepted doctrine of the American courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in Middleton v. Texas Power and Light Company 248 U.S. 152, 157, in which the relevant passage runs as follows:

> It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds.
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> (emphasis supplied)

38. In M.H. Quareshi v. State of Bihar (1959) 1 SCR 629, this Court observed:

> The Courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times, and may assume every state of facts which can be conceived existing at the time of legislation.

39. In Ram Krishna Dalmia v. Justice S.R. Tendolkar (supra), to which reference has been made in the impugned order, this Court laid down various propositions including the following: (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles; (e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation;

40. In R.K. Garg v. Union of India (1981) 4 SCC 675 the Constitution Bench reiterated the well-settled principles in the following words:

> While considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

41. Though, in the writ petitions filed by them, the respondents pleaded that Section 32(5A) is discriminatory, no factual foundation was laid in support of this plea and in the absence of such foundation, the High Court was not at all justified in recording a conclusion that the impugned provision is violative of the equality clause contained in Article 14 of the Constitution.

42. While examining the issue of hostile discrimination in the context of Section 32(5A), the Court cannot be oblivious of the fact that due to unprecedented increase in the population of the Bangalore City and the policy decision taken by the State Government to encourage house building societies to form private layouts, the BDA was obliged to take effective measures to improve the civic

amenities like water supply, electricity, roads, transportation, etc. within the Bangalore Metropolitan Area and for this it became necessary to augment the resources by the BDA itself or through other State agencies/instrumentalities by making suitable contribution. It would be a matter of sheer speculation whether in the absence of increase in the population of the Bangalore Metropolitan Area and problems relating to planned development, the legislature would have enacted the 1976 Act and the State and its agencies/instrumentalities would have spent substantial amount for augmenting water supply, electricity, transportation and other amenities. However, the fact of the matter is that with a view to cater to the new areas, and for making the concept of planned development a reality qua the layouts of the private House Building Societies and those involved in execution of large housing projects, etc., the BDA and other agencies/instrumentalities of the State incurred substantial expenditure for augmenting the water supply, electricity, etc. There could be no justification to transfer the burden of this expenditure on the residents of the areas which were already part of the city of Bangalore. In other words, other residents could not be called upon to share the burden of cost of the amenities largely meant for newly developed areas. Therefore, it is not possible to approve the view taken by the High Court that by restricting the scope of loading the burden of expenses to the allottees of the sites in the layouts developed after 1987, the legislature violated Article 14 of the Constitution. Question (2)

43. Learned senior counsel for the BDA and the counsel appearing for the State assailed the finding recorded by the High Court that Section 32(5A) is a piece of excessive delegation by pointing out that while the sums specified in Section 32(5) are required to be deposited by those intending to form an extension or layout to meet the expenditure for making roads, side-drains, underground drainage and water supply, lighting etc., the amount required to be deposited under Section 32(5A) is meant for developing the infrastructure necessary for augmenting the supply of water, electricity, construction of roads, etc., which are an integral part of the concept of planned development. Learned counsel emphasised that the policy of the legislation is clearly discernable from the Preamble of the 1976 Act and its provisions in terms of which the BDA is required to ensure planned development of the Bangalore Metropolitan Area. Both, Shri Ahmed and Shri Sanjay R. Hegde submitted that Section 32(5A) does not confer unbridled and unguided power upon the BDA and by using the expression such portion of the expenditure as the Authority may determine towards the execution of any scheme or work for augmenting water supply, electricity, roads and the legislature has provided sufficient guidance for exercise of power by the BDA. In support of this argument, learned counsel relied upon the judgments in Municipal Board, Hapur v. Raghuvendra Kripal and others (1966) 1 SCR 950, Corporation of Calcutta and

another v. Liberty Cinema (1965) 2 SCR 477 and Bhavesh D. Parish and others v. Union of India and another (2000) 5 SCC 471.

44. Shri K. K. Venugopal, Shri P. Vishwanatha Shetty, learned senior counsel and other learned counsel appearing for the respondents reiterated the argument made before the High Court that Section 32(5A) suffers from the vice of excessive delegation because the legislature has not laid down any policy for recovery of cost of infrastructure required for augmentation of supply of water, electricity, roads, transportation, etc. Learned senior counsel referred to the averments contained in the amended writ petitions to show that the cost of additional infrastructure is recovered only from those who apply for sanction of private layouts and there is no provision for distribution of liability by creating demand on others including those to whom sites are allotted in the BDA layouts. Shri Venugopal referred to Sections 15 and 16 of the Act to show that the BDA is required to prepare development scheme and execute the same and argued that the cost of the scheme cannot be loaded only on the private layouts. Learned counsel relied upon the judgments in Daymond v South West Water Authority (1976) 1 All England Law Reports 39, The State of West Bengal v. Anwar Ali Sarkar (1952) SCR 284, Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors. (supra) and A.N. Parasuraman and others v. State of Tamil Nadu (1989) 4 SCC 683 to support the conclusion recorded by the High Court that Section 32 (5A) is a piece of excessive delegation.

45. The issue relating to excessive delegation of legislative powers has engaged the attention of this Court for the last more than half century. In Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors. (supra), Kunnathat Thathunni Moopil Nair v. State of Kerala (1961) 3 SCR 77 and A.N. Parasuraman and others v. State of Tamil Nadu (supra), the Court did not favour a liberal application of the concept of delegation of legislative powers but in a large number of other judgments including Jyoti Pershad v. the Administrator for the Union Territory of Delhi (supra), Ajoy Kumar Banerjee v. Union of India (1984) 3 SCC 127, Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27, Kishan Prakash Sharma v. Union of India (2001) 5 SCC 212 and Union of India v. Azadi Bachao Andolan (2004) 10 SCC 1, the Court recognized that it is not possible for the legislature to enact laws with minute details to deal with increasing complexities of governance in a political democracy, and held that the legislature can lay down broad policy principles and guidelines and leave the details to be worked out by the executive and the agencies/instrumentalities of the State and that the delegation of the powers upon such authorities to implement the legislative policy cannot be castigated as excessive delegation of the legislative power.

46. In Jyoti Pershad v. the Administrator for the Union Territory of Delhi (supra), the Court dealt with the question whether Section 19(1) of the Slum Areas (Improvement and Clearance) Act, 1956 which adversely affected the decree of eviction obtained by the landlord against the tenant was a piece of excessive delegation. It was argued that the power vested in the competent authority to withhold eviction in pursuance of orders or decrees of the Court was ultra vires the provisions of the Constitution. While repelling this argument, the Court referred to the provisions of the 1956 Act and observed:

> In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature therefore is forced to leave the authorities created by it an ample discretion limited, however, by the guidance afforded by the Act. This is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long therefore as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment, the mere fact that the legislation is skeletal, or the fact that a discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate. The second is that if the power or discretion has been conferred in a manner which is legal and constitutional, the fact that Parliament could possibly have made more detailed provisions, could obviously not be a ground for invalidating the law.
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> (emphasis supplied)

47. In Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth, (supra), the Court while dealing with the issue of excessive delegation of power to the Board of Secondary Education observed:

> So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively

> within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the statute.

48. In Ajoy Kumar Banerjee v. Union of India (supra), the three Judge Bench, while interpreting the provisions of the General Insurance Business (Nationalisation) Act, 1972, observed: The growth of legislative power of the executive is a significant development of the twentieth century. The theory of laissez-faire has been given a go-by and large and comprehensive powers are being assumed by the State with a view to improve social and economic well-being of the people. Most of the modern socio-economic legislations passed by the Legislature lay down the guiding principles of the legislative policy. The Legislatures, because of limitation imposed upon them and the time factor, hardly can go into the matters in detail. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modem welfare State.

> Regarding delegated legislation, the principle which has been well established is that Legislature must lay down the guidelines, the principles of policy for the authority to whom power to make subordinate legislation is entrusted. The legitimacy of delegated legislation depends upon its being used as ancillary which the Legislature considers to be necessary for the purpose of exercising its legislative power effectively and completely. The Legislature must retain in its own hand the essential legislative function which consists in declaring the legislative policy and lay down the standard which is to be enacted into a rule of law, and what can be delegated in the task of subordinate legislation which by very nature is ancillary to the statute which delegates the power to make it effective provided the legislative policy is enunciated with sufficient clearness or a standard laid down. The courts cannot and do not interfere on the discretion that undoubtedly rests with the Legislature itself in determining the extent of the delegated power in a particular case.
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> (emphasis supplied)

49. In Kishan Prakash Sharma v. Union of India (2001) 5 SCC 212, the Constitution Bench speaking through Rajendra Babu, J. (as he then was), summed up the principle of delegated legislation in the following words:

> The legislatures in India have been held to possess wide power of legislation subject, however, to certain limitations such as the legislature cannot delegate essential legislative functions which consist in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. The legislature cannot delegate uncanalised and uncontrolled power. The legislature must set the limits of the power delegated by declaring the policy of the law and by laying down standards for guidance of those on whom the power to execute the law is conferred. Thus the delegation is valid only when the legislative policy and guidelines to implement it are adequately laid down and the delegate is only empowered to carry out the policy within the guidelines laid down by the legislature. The legislature may, after laying down the legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of the policy. When the Constitution entrusts the duty of law-making to Parliament and the legislatures of States, it impliedly prohibits them to throw away that responsibility on the shoulders of some other authority. An area of compromise is struck that Parliament cannot work in detail the various requirements of giving effect to the enactment and, therefore, that area will be left to be filled in by the delegatee. Thus, the question is whether any particular legislation suffers from excessive delegation and in ascertaining the same, the scheme, the provisions of the statute including its preamble, and the facts and circumstances in the background of which the statute is enacted, the history of the legislation, the complexity of the problems which a modern State has to face, will have to be taken note of and if, on a liberal construction given to a statute, a legislative policy and guidelines for its execution are brought out, the statute, even if skeletal, will be upheld to be valid but this rule of liberal construction should not be carried by the court to the extent of always trying to discover a dormant or latent legislative policy to sustain an arbitrary power conferred on the executive.
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> (emphasis supplied)

50. In Union of India v. Azadi Bachao Andolan (supra), the Court was called upon to consider the constitutionality of the Indo-Mauritius Double Taxation Avoidance

Convention, 1983. While rejecting the argument that Section 90 of the Income Tax Act, under which the Treaty is said to have been entered, amounted to delegation of the essential legislative functions, the Court observed:

> The question whether a particular delegated legislation is in excess of the power of the supporting legislation conferred on the delegate, has to be determined with regard not only to specific provisions contained in the relevant statute conferring the power to make rules or regulations, but also the object and purpose of the Act as can be gathered from the various provisions of the enactment. It would be wholly wrong for the court to substitute its own opinion as to what principle or policy would best serve the objects and purposes of the Act; nor is it open to the court to sit in judgment over the wisdom, the effectiveness or otherwise of the policy, so as to declare a regulation ultra vires merely on the ground that, in the view of the court, the impugned provision will not help to carry through the object and purposes of the Act.
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> (emphasis supplied)

51. The principle which can be deduced from the above noted precedents is that while examining challenge to the constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities.

52. The policy underlying the 1976 Act is clearly discernable from the Preamble of the Town Planning Act and the 1976 Act and the objects sought to be achieved by the two legislations, namely, development of the City of Bangalore and areas adjacent thereto. The Town Planning Act was enacted for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the entire State including the City of Bangalore. By virtue of Section 67 of the 1976 Act and with the insertion of Section 81-B in the Town Planning Act by Act No.12 of 1976, the BDA became the Local Planning Authority for the local planning area comprising the City of Bangalore with jurisdiction over an area which the City Planning Authority for the City of Bangalore had immediately before the constitution of the BDA and the latter has been empowered to exercise the powers, perform the functions and discharge the

duties under the Town Planning Act as if it were a Local Planning Authority constituted for the Bangalore City. In other words, w.e.f. 20.12.1975, i.e., the date on which the 1976 Act was enforced, the BDA acquired the status of a Local Planning Authority as defined in Section 2(7) read with Section 4(C) of the Town Planning Act in respect of the City of Bangalore and thereby acquired the powers which were earlier vested in the Local Planning Authority constituted for the Bangalore City. The objects sought to be achieved by the legislature by enacting the Town Planning Act were to create conditions favourable for planning and replanning of the urban and rural areas in the State so that full civic and social amenities could be available for the people of the State; to stop uncontrolled development of land due to land speculation and profiteering in land; to preserve and improve existing recreational facilities and other amenities contributing towards the balance use of land and future growth of populated areas in the State ensuring desirable standards of environment, health, hygiene and creation of facilities of orderly growth of industry and commerce. The Town Planning Act also envisaged preparation of the town planning schemes and execution thereof by the Planning Authorities constituted for the specified areas. Section 9 (unamended) envisaged preparation of outline development plan incorporating therein the various matters enumerated in Section 12(1), preparation of comprehensive development plan by including the proposal for comprehensive zoning of land use for the planning area; building complete street pattern indicating major and minor roads, National and State highways and traffic circulation pattern for meeting immediate and future requirements; areas for new housing and new areas earmarked for future development and expansion. The definition of development contained in Section 2(j) of the 1976 Act is somewhat similar to the one contained in Section 1(c) of the Town Planning Act. Section 14 of the 1976 Act lays down that the objects of the BDA shall be to promote and secure the development of the Bangalore Metropolitan Area and for that purpose, the BDA shall have the power to acquire, hold manage and dispose of movable and immovable property, whether within or outside the area under its jurisdiction. Bangalore Metropolitan Area has been defined under Section 2(c) of the 1976 Act. It consists of the following areas: (a) area comprising the City of Bangalore as defined in the City of Bangalore Municipal Corporation Act, 1949 which is now replaced by the Karnataka Municipal Corporations Act, 1976, (b) the areas where the City of Bangalore Improvement Act, 1945 was immediately before the commencement of the 1976 Act in force, and (c) such other areas adjacent to the aforesaid as the Government may from time to time by notification specify.

Section 15 empowers the BDA to draw up detailed schemes and undertake works for the development of the Bangalore Metropolitan Area and incur

expenditure for that purpose. It can also take up any new or additional development scheme on its own, subject to the availability of sufficient resources. If a local authority provides necessary funds for framing and carrying out any scheme, then too, the BDA can take up such scheme. Under Section 15(3), which contains a non obstante clause, the Government can issue direction to the BDA to take up any development scheme or work and execute it subject to such terms and conditions as may be specified by it. Section 16 enumerates the matters which are required to be included in the scheme, i.e., the acquisition of land necessary for or affected by the execution of the scheme, laying or relaying of land including construction and reconstruction of buildings and formation and alteration of streets, drainage, water supply and electricity, reservation of land for public parks or playgrounds and at least 10% of the total area for civil amenities. The development scheme may also provide for raising of any land to facilitate better drainage, forming of open spaces for better ventilation of the area comprised in the scheme or any adjoining area and the sanitary arrangement. Sections 17 to 19 contain the mechanism for finalisation of the scheme and its approval by the State Government as also the acquisition of land for the purposes of the scheme. Sections 20 to 26 provide for levy and collection of betterment tax. Section 27 specifies the time limit of five years from the date of publication of the scheme in the Official Gazette for execution of the scheme as also consequence of non execution. Section 28-A casts a duty on the BDA to ensure proper maintenance, lighting and cleansing of the streets and the drainage, sanitary arrangement and water supply in respect of the streets formed by it. Section 32 provides for formation of new extensions or layouts or making of new private streets, which can be done only after obtaining express sanction from the BDA and subject to the conditions which may be specified by the BDA. Section 32(5) lays down that the BDA can call upon the applicant to deposit the sums necessary for meeting the expenditure for making roads, drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes as may be indicated by the BDA, as a condition precedent to the grant of application. Section 32(5A), which also contains a non obstante clause, empowers the BDA to require the applicant to deposit additional amount to meet a portion of the expenditure, which the BDA 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.

53. The above survey of the relevant provisions of the 1961 and the 1976 Acts makes it clear that the basic object of the two enactments is to ensure planned development of the areas which formed part of the Bangalore Metropolitan Area as on 15.12.1975 and other adjacent areas which may be notified by the Government from time to time. The BDA is under an obligation to provide amenities as defined in Section 2(b) and civic amenities as defined in Section 2(bb) of the 1976 Act for the entire Bangalore Metropolitan Area. In exercise of the powers vested in it under Sections 15 and 16, the BDA can prepare detailed schemes for the development of the Bangalore Metropolitan Area and incur expenditure for implementing those schemes, which are termed as development schemes. The expenditure incurred by the BDA in the implementation of the development schemes can be loaded on the beneficiaries of the development schemes. By virtue of Notifications dated 1.11.1965 and 13.3.1984 issued under Section 4A(1) of the Town Planning Act and notification dated 1.3.1988 issued under Section 2(c) of the 1976 Act, hundreds of villages adjacent to the City of Bangalore were merged in the Bangalore Metropolitan Area. For these areas, the BDA was and is bound to provide amenities like water, electricity, streets, roads, sewerage, transport system, etc., which are available to the existing Metropolitan Area of the City of Bangalore. This task could not have been accomplished by the BDA alone from its meager fiscal resources. Therefore, the State Government, the BDA and other instrumentalities of the State like BWSSB had to pool their resources as also man and material to augment water supply, electricity and transport facilities and also make provision for construction of new roads, layouts, etc. The BDA had to contribute to the funds required for new water supply scheme, generation of additional electricity and development of a mass rapid transport system to decongest the Bangalore Metropolitan Area. This is the reason why the State Government passed orders dated 25.3.1987 and 12.1.1993, which could appropriately be treated as directions issued under Section 65 of the 1976 Act for carrying out the purposes of the Act and approved the proposal for loading the BDA's share of expenditure in the execution of the Cauvery Scheme on all the layouts to be formed thereafter. With the insertion of Section 32(5A) in the 1976 Act, these orders acquired the legislative mandate. In terms of that section, the BDA has been vested with the power to call upon the applicants desirous of forming new extensions or layouts or private streets to pay a specified sum in addition to the sums referred to in Section 32(5) to meet a portion of the expenditure incurred for the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and other amenities.

54. At the cost of repetition, it will be apposite to observe that apart from the Preamble and the objects of the 1961 and 1976 Acts and the scheme of the two

enactments, the expression 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 supplies sufficient guidance for the exercise of power by the BDA under Section 32(5A) and it is not possible to agree with the learned counsel for the respondents that the section confers unbridled and uncanalised power upon the BDA to demand an unspecified amount from those desirous of forming private layouts. It is needless to say that the exercise of power by the BDA under Section 32(5A) is always subject to directions which can be given by the State Government under Section 65. We may add that it could not have been possible for the legislature to make provision for effective implementation of the provisions contained in the 1961 and 1976 Acts for the development of the Bangalore Metropolitan Area and this task had to be delegated to some other agency/instrumentality of the State.

55. The above discussion leads to the conclusion that Section 32(5A) does not suffer from the vice of excessive delegation and the legislative guidelines can be traced in the Preamble of the 1961 and 1976 Acts and the object and scheme of the two legislations.

Question (3)

56. The next question which calls for determination is whether the demand of charges under the Cauvery Scheme, etc. amounts to imposition of tax and is, therefore, ultra vires the provision of Article 265 of the Constitution.

57. The debate whether a particular levy can be treated as `fee' or `tax' and whether in the absence of direct evidence of quid pro quo, the levy would always be treated as tax has engaged the attention of this Court and almost all the High Courts for the last more than four decades.

58. In Kewal Krishan Puri v. State of Punjab (1980) 1 SCC 416, the Constitution Bench considered the question whether the resolutions passed by the Agriculture Market Committees in Punjab and Haryana to increase the market fee on the agricultural produce bought and sold by the licensees in the notified market areas from Rs. 2/- to Rs. 3/- for every Rs. 100/- were legally sustainable. After noticing the distinction between tax and fee and a large number of precedents, the Constitution Bench culled out the following principles:

(1) That the amount of fee realised must be earmarked for rendering services to the licensees in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.

(2) That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.

(3) That while rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable correlation between the licensees and the transactions.

(4) That while conferring some special benefits on the licensees it is permissible to render such service in the market which may be in the general interest of all concerned with the transactions taking place in the market.

(5) That spending the amount of market fees for the purpose of augmenting the agricultural produce, its facility of transport in villages and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

(6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.

(7) At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services of the kind mentioned above.

59. The ratio of the aforesaid judgment was substantially diluted in Southern Pharmaceuticals and Chemicals, Trichur and others v. State of Kerala and others (1981) 4 SCC 391. In the latter decision, the Court considered the constitutional

validity of Sections 12-A, 12-B, 14(e) and (f) and 68-A of the Kerala Abkari Act 1077. One of the questions considered by the 3-Judge Bench was whether the levy of supervisory charges under Section 14 (e) of the Act and Rule 16(4) of the Kerala Rectified Spirit Rules, 1972 could be regarded as fee even though there was no quid pro quo between the levy and the services rendered by the State. The Bench referred to the distinction between tax and fee highlighted in the Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt (1954) SCR 1005 and proceeded to observe:

> Fees are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax. We may, in this connection, refer with profit to the observations of Seervai in his Constitutional Law, to the effect:
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> It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, the character of the imposition would not change because under

> Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of quid pro quo is not necessarily absent in every tax. (emphasis supplied)

The three Judge Bench also referred to the Constitution Bench judgment in Kewal Krishna Puri v. State of Punjab (supra) and observed:

> To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs 2 per every hundred rupees to Rs 3. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation.

60. The test laid down in Kewal Krishna Puri v. State of Punjab (supra) was again considered in Sreenivasa General Traders v. State of A.P. (1983) 4 SCC 353. In that case, the petitioners had challenged the constitutional validity of the increase in the rate of market fee levied under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 from 50 paise to Rs. 1/- on every Rs. 100/- of the aggregate amount for which the notified agricultural produce, etc. were purchased or sold in the notified market area. The petitioners relied upon the proposition laid down in Kewal Krishna Puri's case (supra) in support of their argument that in the absence of any evidence or correlation between the levy and special services rendered by the Market Committees to the beneficiaries, the levy should be regarded as tax. The three Judge Bench referred to the proposition laid down in Kewal Krishna Puri's case (supra) and observed: It would appear that there are certain observations to be found in the judgment in Kewal Krishan Puri case which were really not necessary for purposes of the decision and go beyond the occasion and therefore they have no binding authority though they may have merely persuasive value. The observation made therein seeking to quantify the extent of correlation between the amount of fee collected and the cost of rendition of service, namely: (SCC p. 435, para 23): At least a good and substantial portion of the amount collected on account of fees, maybe in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty as being spent for rendering services in the market to the payer of fee, appears to be an obiter.

> The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between

> a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be by and large a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (sic or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable relationship between the levy of the fee and the services rendered.

61. In Kishan Lal Lakhmi Chand v. State of Haryana 1993 Supp (4) SCC 461, while dealing with the constitutionality of the levy of cess under the Haryana Rural Development Act, 1986, the three Judge Bench referred to the scheme of the Act and held that from the scheme of the Act it would be clear that there is a broad, reasonable and general corelationship between the levy and the resultant benefit to the producer of the agricultural produce, dealer and purchasers as a class though no single payer of the fee receives direct or personal benefit from those services. Though the general public may be benefited from some of the services like laying roads, the primary service was to the producer, dealer and purchaser of the agricultural produce.

62. Industries Ltd. (1995) 1 SCC 655 the two Judge Bench reviewed and analysed various precedents including the judgments in Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt (supra), Mahant Sri Jagannath Ramanuj Das v. State of Orissa (1954) SCR 1046, Ratilal Panachand Gandhi v. State of Bombay (1954) SCR 1055, H.H. Sadhundra Thirtha Swamiar v. Commissioner for Hindu Religious and Charitable Endowments 1963 Supp (2) SCR 302, Corporation of Calcutta v. Liberty Cinema (supra), Kewal Krishna Puri v. State of Punjab (supra), Sreenivasa General Traders v. State of A.P. (supra), Om Parkash Agarwal v. Giri Raj Kishori (1986) 1 SCC 722, Kishan Lal Lakhmi Chand v. State of Haryana (supra) and culled out 9 propositions, of which proposition No. 7 is extracted below:

(7) It is not a postulate of a fee that it must have relation to the actual service rendered. However, the rendering of service has to be established. The service, further, cannot be remote. The test of quid pro quo is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. It is not necessary to confer the whole of the benefit on the payers of the fee but some special benefit must be conferred on them which has a direct and reasonable corelation to the fee. While conferring some special benefits on the payers of the fees, it is permissible to render service in the general interest of all concerned. The element of quid pro quo is not possible or even necessary to be established with arithmetical exactitude. But it must be established broadly and reasonably that the amount is being spent for rendering services to those on whom the burden of the fee falls. There is no postulate of a fee that it must have a direct relation to the actual services rendered by the authorities to each individual to obtain the benefit of the service. The element of quid pro quo in the strict sense is not always a sine qua non for a fee. The element of quid pro quo is not necessarily absent in every tax. It is enough if there is a broad, reasonable and general corelationship between the levy and the resultant benefit to the class of people on which the fee is levied though no single payer of the fee receives direct or personal benefit from those services. It is immaterial that the general public may also be benefited from some of the services if the primary service intended is for the payers of the fees.

63. In I.T.C. Ltd. v. State of Karnataka 1985 (Supp) SCC 476, another three Judge Bench considered the validity of levy and collection of market fee from sellers of specified agricultural produce. Sabyasachi Mukharji, J. (as he then was), with whom Fazal Ali, J. (as he then was) agreed, laid down the following principles:

(1) there should be relationship between service and fee,

(2) that the relationship is reasonable cannot be established with mathematical exactitude in the sense that both sides must be equally balanced,

(3) in the course of rendering such services to the payers of the fee if some other benefits accrue or arise to others, quid pro quo is not destroyed. The concept of quid pro quo should be judged in the context of the present days -- a concept of markets which are expected to render various services and

provide various amenities, and these benefits cannot be divorced from the benefits accruing incidentally to others,

(4) a reasonable projection for the future years of practical scheme is permissible, and

(5) services rendered must be to the users of those markets or to the subsequent users of those markets as a class. Though fee is not levied as a part of common burden yet service and payment cannot exactly be balanced.

(6) The primary object and the essential purpose of the imposition must be looked into.

64. If the conditions imposed by the BDA requiring the respondents to pay for augmentation of water supply, electricity, transport, etc. are scrutinized in the light of the principles laid down in Sreenivasa General Traders v. State of A.P. (supra), Kishan Lal Lakhmi Chand v. State of Haryana (supra) and I.T.C. Ltd. v. State of Karnataka (supra), it cannot be said that the demand made by the BDA amounts to levy of tax and is ultra vires Article 265 of the Constitution.

65. Under the 1976 Act, the BDA is obliged to provide different types of amenities to the population of the Bangalore Metropolitan Area including the allottees of the sites in the layouts prepared by house building societies. It is quite possible that they may not be the direct beneficiaries of one or the other amenities made available by the BDA, but this cannot detract from the fact that they will certainly be benefited by the construction of the Outer Ring Road and Intermediate Ring Road, Mass Rapid Transport System, etc. They will also be the ultimate beneficiaries of the Cauvery Scheme because availability of additional 270 MLD water to Bangalore will enable BWSSB to spare water for the private layouts. It is neither the pleaded case of the respondents nor it has been argued that the allottees of sites in the layouts to be developed by the private societies will not get benefit of amenities provided by the BDA. Thus, charges demanded by the BDA under Section 32(5A) cannot be termed as tax and declared unconstitutional on the ground that the same are not sanctioned by the law enacted by competent legislature. Question (4)

66. The only issue which survives for consideration is whether the charges demanded by the BDA are totally disproportionate to its contribution towards Cauvery Water Scheme, Ring Road, Mass Rapid Transport System, etc. We may have examined the issue in detail but in view of the affidavit dated 11.11.2009

filed by Shri Siddaiah, the then Commissioner, BDA to the effect that only Rs. 34.55 crores have been collected between February, 1988 to 4.6.2005 towards the Cauvery Scheme and a sum of Rs. 15.15 crores has been collected by way of Ring Road surcharge between 1992-93 and 2005-06 and that the State Government has directed that henceforth Ring Road surcharge, the Cauvery Water Cess and MRTS Cess should not be levied till appropriate decision is taken, we do not consider it necessary to adjudicate the controversy, more so, because in the written arguments filed on behalf of the BDA it has been categorically stated that the Government has to take a decision about the pending demands and the Court may issue appropriate direction in the matter, which the BDA will comply. In our view, ends of justice will be served by directing the State Government to take appropriate decision in the light of communication dated 03.05.2005.

67. So far as the levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess is concerned, it is appropriate to mention that the High Court has not assigned any reason for declaring the levy of these charges to be illegal. Therefore, that part of the impugned order cannot be sustained. Nevertheless, we feel that the State Government should take appropriate decision in the matter of levy of these charges as well and determine whether the same were disproportionate to the expenses incurred by it, the BDA or any other agency/instrumentality of the State.

68. In the result, the appeals are allowed, the impugned order is set aside and the writ petitions filed by the respondents are dismissed subject to the direction that within three months from the date of receipt/production of the copy of this judgment, the State Government shall take appropriate decision in the context of communication dated 03.05.2005. Within this period, the State Government shall also decide whether the levy of supervision charges, improvement charges, examination charges, slum clearance development charges and MRTS cess at the rates specified in the communications of the BDA was excessive. The decision of the State Government should be communicated to the respondents within next four weeks. If any of the respondents feel aggrieved by the decision of the State Government then it shall be free to avail appropriate legal remedy. The parties shall bear their respective costs.