SUPREME COURT OF INDIA

Chennai Metropolitan Development Authority Rep. by its Member- Secretary

Vs.

Prestige Estates Project Ltd.

C.A.No.5642-5643 of 2019

(Dr.D.Y.Chandrachud and Indira Banarjee,JJ.,)

29.07.2019

JUDGMENT

Dr.D.Y.Chandrachud,J.,

SLP(C)No.31274-31275 of 2014

1. These appeals arise from a judgment of a Division Bench of the High Court of Judicature at Madras in a Writ Appeal, affirming the judgment of a learned Single Judge in proceedings under Article 226 of the Constitution. The High Court set aside a demand raised by the appellant for revised charges on account of (i) *structure and Amenities*[1]*;* and (ii) Premium Floor Space Index[2].

2. The respondent submitted an application on 22 March 2011 for planning permission to construct a multi-storeyed building complex at Ayyappan Thangal Village, Thiruperumbudur Taluk. The Housing and Urban Development Department of the Government of Tamil Nadu, to which the application was forwarded for approval in terms of the Development Regulations[3], accorded its approval to the recommendation of the Multi-storeyed Building Panel.

3. On 5 January 2012, the State government in a letter to the appellant approved the recommendation, subject to the following conditions:

> "(i) Chennai Metropolitan Development Authority should ensure that the applicant gifts the road widening portions marked in the plan to the Chennai Metropolitan Development Authority along with OSR spaces before issue of Planning Permission.
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> (ii) The applicant shall furnish 'No Objection Certificate' from Chennai Metropolitan Water Supply and Sewerage Board for using their land in S. Nos. 51/1B2 and 1C2 for access before issue of Development Charges advice.
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> (iii) Subject to other usual condition." The letter stated that before the issuance of

planning permission, an undertaking should be obtained from the respondent to fulfill

(i) The provisions contained in the DR; and

(ii) The conditions imposed by the Director of Fire and Rescue Service and other Departments.

The appellant, as the planning authority, was requested to take up further action for issuance of a planning permission.

4. The appellant, which is a planning authority under the provisions of the *Tamil Nadu Town & Country Planning Act 1971*[4], was required to consider the application for the grant of planning permission under Section 49. The *Chennai Metropolitan Water Supply and Sewerage Board*[5] addressed a letter on 6 February 2012 to the respondent stating that it would consider the issuance of its *No Objection Certificate*[6] subject to the acceptance of the following conditions:

"1. RCC Compound wall shall be constructed on the boundaries of the proposed land adjacent to CMWSSB land with gate provisions of 6m. span at both ends as accesses to reach the other side of the proposed multistoried residential buildings as accepted in your Lr.dt. 28.01.2012.

2. The design and estimate for proposed R.C.C culvert of suitable length and width should be submitted for approval of CMWSSB, before construction of culvert.

3.The proposed R.C.C culverts with clearance of 1.5mtr all-round the pipeline should be constructed at both crossings to reach the property under the supervision of CMWSS Board.

4. Supervision charge @ 21% of the estimated construction cost should be deposited to CMWSSB before construction of culvert.

5. The existing pipeline should not be damaged at any point of time and if any damage is caused at the time of construction of culverts/compound wall, the entire repair cost should be borne by you.

6. If any leak or burst occurs in the pipeline in future within the culvert portion, the culvert will be demolished by the Board for attending leak/burst in future and the same has to be reconstructed at your risk and cost.

7. You should not have any rights, whatsoever to claim the ownership of the above board's land.

8.The Board reserves the right to enter upon the premises for any inspection and to cancel the "No Objection Certificate" at any point of time without assigning any

reason in the interest of public."

5. On 2 March 2012, the respondent addressed a communication to the appellant, stating that it had accepted the conditions imposed by Sewerage Board by its letter dated 18 February 2012 and that a formal NOC was expected shortly. The appellant was requested to process the planning permission and to issue a notice of demand for development charges in order to enable the respondent to arrange for the funds required. The respondent, in its above letter dated 2 March 2012 stated:

> "Now we expect the formal NOC from CMWSSB very shortly. In view of the above progress on the NOC, we request that the processing of Planning Permit and the notice for development charges may kindly be issued to assess the fees amount involved and also to make arrangement for the funds required. We further assure you that before the payment of fees is effected by us the formal NOC from CMWSSB will be submitted."

6. On 7 March 2012, the appellant requested the Sub-Registrar, Chennai South to furnish the guideline value of urban land for the survey numbers where development was proposed by the respondent for assessing the Premium FSI charges in relation to the development proposal. This was furnished by the Sub-Registrar on 7 March 2012.

7. On 27 March 2012, the appellant issued a demand notice requiring the respondent to deposit the following charges in order to facilitate the processing of its application:

> i) Development charge for land and building under Sec. 59 of the T&CP Act, 1971 Rs. 63,10,000/- (Rupees sixty three Lakh and ten Thousand Only)
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> ii)Balance Scrutiny Fee Rs. 50,000/- (Rupees fifty Thousand only)
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> iii)Regularisation charge for unauthorized sub division & amalgamation Rs. 25,10,000/- (Rupees twenty five lakh and ten thousand only)
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> iv)Security Deposit (For Building) Rs. 4,64,15,000/- (Rupees four crore sixty four lakh and fifteen thousand Only)
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> v) Security Deposit for Display Board Rs. 10,000/- (Rupees Ten Thousand Only)
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> vi)Security Deposit for STP Rs. 27,15,000/- (Rupees twenty seven lakh and fifteen Thousand Only)
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> vii) Infrastructure & Amenities Charges Rs. 8,34,40,000/- (Rupees eight crore thirty four lakh and forty Thousand Only)
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> viii)Premium FSI charge for 78690.55 sq.m. Rs. 44,75,88,000/- (Rupees Forty four crore and seventy five lakh eighty thousand only)

The appellant also required the respondent to comply with the following requisitions :

"a. Furnish the letter of your acceptance for the following conditions stipulated by virtue of provisions available under DR 4(i) d of Annexure III:-

(i) The construction shall be undertaken as per sanctioned plan only and no deviation from the plans should be made without prior sanction. Construction done in deviation is liable to be demolished.

(ii) In cases of Multi-storied Building both qualified Architect and qualified structural Engineer who should be a Class-I Licensed Surveyor shall be associated and the above information to be furnished.

(iii) A report in writing shall be sent to Chennai Metropolitan Development Authority by the Architect/Class-I Licensed Surveyor who supervises the construction just before the commencement of the erection of the building as per the sanctioned plan, similar report shall be sent to CMDA when the building has reached up to plinth level and thereafter every three months at various stages of the construction/development certifying that the work so far completed is in accordance with the approved plan. The Licensed Surveyor and Architect shall inform this Authority immediately if the contract between him/them and the owner/developer, has been cancelled or the construction is carried out in deviation to the approved plan.

(iv) The owner shall inform Chennai Metropolitan Development Authority of any change of the Licensed Surveyor/Architect. The newly appointed Licensed Surveyor/Architect shall also confirm to CDMA that he has agreed for supervising the work under reference and intimate the stage of construction at which he has taken over. No construction shall be carried on during the period intervening between exit of the previous Architect/Licensed Surveyor and entry of the new appointee.

(v) On completion of the construction the applicant shall intimate CDMA and shall not occupy the building or permit it to be occupied until a completion certificate is obtained from CMDA.

(vi) While the applicant makes application for service connection such as Electricity, Water Supply, Sewerage he should enclose a copy of the completion certificate issued by CMDA along with his application to the concerned Department/Board/Agency.

(vii)When the site under reference is transferred by way of sale/lease or any other means to any person before completion of the construction, the party shall inform CMDA of such transaction and also the name and address of the persons to whom the site is transferred immediately after such transaction and shall bind the

purchaser to those conditions to the Planning Permission.

(viii) In the Open space within the site, trees should be planted and the existing trees preserved to the extent possible;

(ix) If there is any false statement, suppression or any misrepresentation of acts in the applicant, planning permission will be liable for cancellation and the development made, if any will be treated as authorized.

(x) The new building should have mosquito proof overhead tanks and wells.

(xi) The sanction will be revoked, if the conditions mentioned above are not complied with.

(xii) Rainwater conservation measures notified by CMDA should be adhered to strictly.

(a). Undertaking (in the format prescribed in Annexure -XIV to DCR, a copy of it enclosed in Rs. 20/- stamp paper duly executed by all the land owner, GPA holders, builders and promoters separately. The undertakings shall be duly attested by a Notary Public.

(b) Details of the proposed development duly filled in the format enclosed for display at the site. Display of the information at site is compulsory in cases of Multi-storied buildings, Special buildings and Group developments"
The letter further stipulated that :

"7. The issue of planning permission depends on the compliance/fulfilment of the conditions/payments stated above. The acceptance by the Authority of the pre-payment of the Development charge and other charges etc. shall not entitle the person to the Planning Permission but only refund of the Development Charge and other charges (excluding Scrutiny Fee) in cases of refusal of the permission for non-compliance of the conditions stated above or any of the provisions of DR, which has to be complied before getting the Planning permission or any other reason provided the construction is not commenced and claim for refund is made by the applicant."

(Emphasis supplied)

8. On 28 March 2012, the respondent paid the charges which were demanded by the appellant on 27 March 2012. In the meantime, on 26 March 2012, the Government revised the guideline values with effect from 1 April 2012. One of the conditions subject to which the State government had granted its approval to the respondent was the obtaining of an NOC from the Sewerage Board. On 28 March, 2012, G.O.Ms No. 86 was issued by the Housing and Urban Development Department whereby the I & A charges for different categories and buildings falling under the jurisdiction of the appellant and of the Commissioner of Town and Country Planning were to stand increased by 50 per cent over

the then prevailing rates. The Sewerage Board issued its NOC on 30 March 2012, subject to the condition that the respondent execute a gift deed in respect of a piece of land. This requirement was complied with on 27 April 2012. When the file pertaining to the grant of planning permission to the respondent was under consideration, guideline values were revised by the State government with effect from 1 April 2012. A demand notice was issued on 22 August 2012 by the appellant by which the demand was revised for charges under two heads:

i) Balance I & A Charges Rs. 4,17,15,000/- (Rupees Four Crore Seventeen Lakh and Fifteen thousand Only)

ii) Balance Premium FSI Charge Rs. 90,76,75,000/ (Rupees ninety crore seventy six lakh and seventy five thousand only)

9. The demand notice was questioned by the respondent in writ proceedings before the High Court. A learned Single Judge, by a judgment dated 13 December 2012, allowed the writ petition holding that a right had accrued to the respondent to obtain planning permission and that it could not be divested by the subsequent amendment made with effect from 1 April 2012. The demand was quashed and set aside. The Writ Appeal has been dismissed by a Division Bench of the High Court on 1 August 2014. The Division Bench held that:

> (i) Insofar as the levy of I & A Charges are concerned, no amendment has been made to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules 2008[7] and in consequence, the demand of Rs. 4,17,15,000/- is without the authority of law;
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> (ii) The respondent had remitted the I & A charges and Premium FSI charges on 29 March 2012;
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> (iii) Office Order No. 7/2012 dated 16 April 2012 made it clear that the I & A charges were applicable for applications for planning permission where the advice for the payment of development charges was sent on or after 28 March 2012. In the present case, since the demand had been remitted prior to 28 March 2012, the pre-revised I & A charges were applicable; and
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> (iv) The charges for Premium FSI as revised with effect from 1 April 2012 could not be made applicable to the respondent. The NOC of the Sewerage Board was dated 30 March 2012 and the mere fact that it was received by the appellant on 2 April 2012 was not a valid ground for the demand notice and hence the demand could not be justified.

10. Assailing the decision of the High Court, Mr K M Nataraj, learned Additional Solicitor General of India formulated two issues which need to be addressed in these proceedings:

> "(i) Whether charges namely Infrastructure & Amenities charges and Premium FSI

charges are required to be collected as per rates prevailing as on the date of submission of planning permission application or on the date of granting approval of planning permission;

(ii) Whether the respondent herein has accrued any vested right before granting approval of planning permission merely because they remitted the charges as per demand notice dated 27-03-2012."

The learned ASG urged that the appellant, as a planning authority, is under a statutory obligation to levy and collect the charges as applicable when planning permission is granted. The pendency of an application or the deposit of the payment earlier by the applicant does not create a vested right. If the planning permission is not granted, the planning authority would have to refund the amount deposited. Hence, the crucial date for determining the applicable charges is the date on which planning permission is granted by the planning authority. In the present case, the planning permission was granted only in 2013, pursuant to the interim order of the High Court subject to a further deposit of Rs 10 Crores as ordered. Insofar as I & A charges are concerned, it was urged that the High Court erroneously relied on the Office Order dated 16 April 2012 which records that the old rates would be applicable where the development charges' advice was sent before 28 March 2012. This, it has been urged, is in conflict with the GO dated 28 March 2012 according to which, I & A charges were to stand increased by 50 per cent over the then prevailing rates. The learned ASG argued that an amendment to the Rules was not necessary since the charges are determined and are leviable under an order issued pursuant to Section 63B while according building permission and hence the order of the High Court needs to be interfered with.

11. On the other hand, Mr Rana Mukherjee, learned Senior Counsel appearing on behalf of the respondents submitted that:

(i) As regards I & A charges:

(a) Clause 6 of G.O.Ms No. 86 by which the charges were revised required that the Commissioner of Town and Country Planning submit a proposal for an amendment to the Rules of 2008. As a matter of fact, no amendment has been carried out; and

(b) Clause (i) of the Office Order dated 16 April 2012, states that revised I & A charges shall be applicable for demands made on or after 28 March 2012. Hence, the revised charges would not be applicable to the respondent against whom a demand had been raised on 27 March 2012 by the appellant.

(ii) As regards charges for Premium FSI :

(a) All payment related obligations were completed by the appellant on 29 March 2012 prior to the revision of the guideline values on 1 April 2012. Consequently, the revised rates would not be applicable and if any date after payment is to be taken into account that would only enable the government to unlawfully and

unfairly delay the issuance of permissions and thereafter raise enormous demands. To obviate this, the cut-off date ought to be treated as the date of payment;
(b) The principle which has been enunciated in the judgment of this Court in *Union of India v Mahajan Industries Ltd*[8]. Is applicable; and

(c) The subject matter of the demand pertains to payment levied by the respondent and not a change in the development control rules such as involving a change in floors, setbacks etc. Moreover, it was urged that the planning permission in the present case was granted on 30 May 2012 and therefore the withholding of a copy and the basis of the impugned demand is a mere after thought. The revised demand does not indicate any reasons or basis.

12. The rival submissions now fall for consideration.

13. Section 48 of the Planning Act 1971 imposes a restraint upon the construction of buildings and making a material change in the use of land except with the written permission[9] of the planning authority and in accordance with the conditions specified in the grant of permissio terms:

"49. Application for permission.- (1) Except as otherwise provided by rules made in this behalf, any person not being any State Government or the Central Government or any local authority intending to carry out any development on any land or building on or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, shall make an application in writing to the appropriate planning authority for permission in such form and containing such particulars and accompanied by such documents as may be prescribed.

(2) The appropriate planning authority shall, in deciding whether to grant or refuse such permission, have regard to the following matters, namely:-

(a) the purpose for which the permission is required;

(b)the suitability of the place for such purpose;

(c) the future development and maintenance of the planning area

(3) When the appropriate planning authority refuses to grant a permission to any person, it shall record in writing the reasons for such refusal and furnish to that person, on demand, a brief statement of the same."

The Planning Act 1971 requires the grant of planning permission before development or a change in the use of land can take place. The mere filing of an application does not entitle the applicant to permission. Nor is there a vested right to the grant of permission.

Section 63B provides for the levy of I & A charges:

"63-B. Levy of infrastructure and amenities charges .-(1) Every local authority or the planning authority, as the case may be, while according building permit under the relevant laws or according permission under this Act, as the case may be, shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area so as to meet the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities at the rates as determined in accordance with such procedure as may be prescribed which shall not be less than minimum and not more than the maximum as may be prescribed, and different rates may be prescribed for different parts of the planning area and for different uses.

(2) The infrastructure and amenities charges shall be leviable on any person who undertakes or carries out any such development or institutes any use or changes any such use.

(3) The collection of the infrastructure and amenities charges shall be made in such manner as may be prescribed.
Explanation.- For the purpose of this Section "relevant laws" means in case of-

(i) the Chennai Metropolitan Development Authority, the Tamil Nadu Town and Country Planning Act, 1971 (T.N.Act 35 of 1972);

(ii)the Chennai City Municipal Corporation, the Chennai City Municipal Corporation Act, 1919 (T.N.Act 4 of 1919);

(iii) the Madurai City Municipal Corporation, the Madurai City Municipal Corporation Act, 1971 (T.N.Act 15 of 1971);

(iv) the Coimbatore City Municipal Corporation, the Coimbatore City, Municipal Corporation Act, 1981 (T.N.Act 25 of 1981);

(v) the Tiruchirappalli City Municipal Corporation, the Tiruchirappalli City Municipal Corporation Act, 1994 (T.N.Act 27 of 1994);

(vi) the Tirunelveli City Municipal Corporation, the Tirunelveli City Municipal Corporation Act, 1994 (T.N.Act 27 of 1994);

(vii) the Salem City Municipal Corporation, the Salem City Municipal Corporation Act, 1994 (T.N.Act 29 of 1994);

(viii) the Municipalities and Town Panchayats, the Tamil Nadu District Municipalities Act, 1920 (T.N.Act 5 of 1920); and

(ix) the Panchayat Unions and Village Panchayats, the Tamil Nadu Panchayats Act, 1994 (T.N.Act 21 of 1994).” permit either under relevant laws or while according permission under the Planning Act 1971. These charges are leviable on the institution of use or change of use of land or building or development of any land or building. The rates are determined in accordance with such procedure as may be prescribed. The rates are not to be less than the minimum and more than the maximum that is prescribed.

14. Rule 4 of the Rules 2008 contains provisions for the imposition of the I & A charges:

> “4. Infrastructure and Amenities Charges. – The infrastructure and amenities charges shall be collected for new construction, additions to existing constructions and change of use of existing buildings at the rates not exceeding the maximum rate and not less than the minimum rates indicated in the Table below, in case of different categories of buildings referred to in the Table:

THE TABLE

Sl No.	Type of building	Minimum rates per square metre	Maximum rates per square metre
(1)	**(2)**	**(3)** Rs.	**(4)** Rs.
1.	Multistoryed buildings accommodating residential or commercial or Information technology or industrial of institutional or combination of such activities	500	1,000
2.	Commercial building. Information Technology building, Group	200	500

15. Rule 5 empowers the Director Of Town and Country Planning to fix the rates of charges in respect of areas other than the Chennai Metropolitan Planning Area. In respect of the Chennai Metropolitan Planning Area, the power to fix the charges, subject to due observance of the minimum and the maximum specified in Rule 4, is conferred on the Vice-Chairman of the Chennai Metropolitan Development Authority. Rule 5 (2) provides

thus:

> "5. Fixation of rates of Charges. (2) In respect of the Chennai Metropolitan Planning Area, the Vice Chairman, Chennai Metropolitan Development Authority shall fix the rates of such charges for each of the above categories of buildings which shall not be less than the minimum and not more than the maximum as prescribed in Rule 4, taking into account the various aspects of developments including infrastructure needs.
>
> He may fix different rates for different categories of buildings or for different areas."

16. The power to levy charges for the Premium FSI is in Regulation 36 of the Second Master Plan for Chennai Metropolitan Area 2006 (Regulation)[10]. Regulation 36 is in the following terms:

> "36. Premium FSI.- The Authority may allow premium FSI over and above the normally allowable FSI, in any case not exceeding 0.5 for special building and group developments, and not exceeding 1.0 for multistoreyed buildings in specific areas which may be notified, on collection of a charge at the rates as may be prescribed with the approval of the Government. The amount collected shall be kept in an escrow amount for utilizing it for infrastructure development in that area as may be decided by the Government."

17. Premium FSI is the Floor Space Index over and above that which is normally allowable and is not to exceed 0.5 for special buildings and group developments or 1.0 for multi-storeyed buildings in specific areas. The rates for premium FSI are prescribed with the approval of the Government.

18. On 27 March 2012, the appellant raised a demand on the respondent for the payment of charges including:

> (i) I & A charges of Rs. 8,34,40,000/-; and
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> (ii) Premium FSI charges for 78690.55 sq.mtrs in the amount of Rs.44,75,88,000/-. While raising the demand, the respondent was informed of the conditions required to be complied with in order to ensure the grant of planning permission. The letter specifically stated that while the grant of planning permission depended upon the fulfillment of the conditions stipulated in the letter, pre-payment of the development charges and other charges would not entitle the respondent to planning permission but only to a refund if planning permission were to be refused.

19. On 28 March 2012, the Housing and Urban Development Department of the Government of Tamil Nadu issued G.O.Ms No. 86 stipulating that:

> (i) The minimum and maximum rates as specified in Rule 4 of the I & A Rules

2008 "shall be done away with"; and

(ii) The I & A charges for different categories and buildings falling under the jurisdiction of the appellant and of the Commissioner of Town and Country Planning were to stand increased by 50 per cent over the then prevailing rates. Thus, for instance, the I & A charges for multi-storeyed residential buildings were sought to be revised for the Chennai Metropolitan Development Planning Areas from Rs. 250 per sq. mtr to Rs. 375 per sq.mtr. Clause (6) of G.O.Ms contemplates an amendment to the Rules 2008:

"6) The Commissioner of Town and Country Planning is directed to send necessary proposal on amendment to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 to Government accordingly."

20. It was in view of the provisions contained in clause (6) extracted above that the Division Bench in its judgment dated 1 August 2014 recorded, having enquired of the Advocate General, as to whether any proposal for the amendment of the rules had been initiated. The Advocate General informed the High Court that while steps to amend the rules had been initiated, it would take about two months to complete the process of amending them. It was in this view of the matter and the statement of the Advocate General that the High Court recorded that as on the date of its judgment, no amendment was made to the Rules 2008 for the purpose of increasing the I & A charges. Rule 4 as it stands prescribes the minimum and the maximum rates for the levy of I & A charges. Rule 5(2) empowers the Vice-Chairman of Chennai Metropolitan Development Authority to fix the rates for the Chennai Metropolitan Development Planning Areas, while observing the minimum and the maximum rates set out in Rule 4. The proposal which was initiated by the government on 28 March 2012 envisaged the elimination of the minimum and maximum rates specified in Rule 4 as a result of which clause (6) of G.O.Ms. 86 incorporates a requirement of amending the Rules 2008. Absent an amendment to the Rules 2008, the High Court held that the demand for I & A charges at the revised rate could not be enforced against the respondent. A revision of the I & A charges could have been effected by the Vice-Chairman of the appellant in terms of Rule 5(2) without a formal amendment to the Rules 2008, so long as the minimum and maximum provided in Rule 4 is not breached. However, it appears that the government took the view that an amendment to the rules was necessitated since the table specifying the minimum and maximum in Rule 4 was to be abrogated. It was for the above reason that the High Court came to the conclusion that a revised demand for I & A charges could not be enforced in the absence of an amendment to the Rules 2008. Section 63B requires that the minimum and maximum rates should be prescribed. This will have to be borne in mind by the government. Subordinate legislation has to be in conformity with parent legislation.

21. The High Court also adverted to the Internal Office Circular/Order dated 16 April 2012 of the appellant which specified that while the revised I & A charges were leviable with effect from the issuance of G.O.Ms. No. 86 on 28 March 2012:

"i. The revised rate of Infrastructure & Amenities charges are applicable for the

> Planning Permission Applications, where Development Charges advice was sent on or after 28.03.2012. In the case of Planning Permission Applications for which DC advice dated prior to 28.03.2012, the pre-revised rates only applicable."

In terms of the above office order, cases where the "Development Charges advice" was sent prior to 28 March 2012 would be governed by the pre-revised rates. The government is bound by its own decision. Consequently, on this aspect of the matter, we are in agreement with the view of the High Court that the revised I & A charges were not lawfully demanded from the appellant to whom the development charges advice had been issued prior to 28 March 2012.

22. The second aspect of the matter which needs scrutiny is in regard to the levy of Premium FSI charges. The levy of Premium FSI charges under Regulation 36 is incident to the planning authority allowing Premium FSI over and above the FSI which is normally allowable. In other words, it is upon and subject to the grant of Premium FSI that the authority can demand Premium FSI charges. If no Premium FSI is sanctioned, obviously there would be no occasion to demand a charge for Premium FSI. Similarly, if planning permission were to be refused, the deposit which is made by the developer would be refunded. This was categorically stated in the demand which was raised on the respondent on 27 March 2012.

23. Planning permission is granted by the planning authority upon an application for permission which is made under Section 49 of the Planning Act 1971. In the present case, the planning permission was granted upon an interim order of the High Court, subject to the deposit of Rs. 10 Crores on 13 March 2013. Though the appellant received the approval of the Housing and Urban Development Department on 5 January 2012 following the recommendation of the Multi-storyed Building Panel, the grant of planning permission was still to be considered by the Planning Authority. The letter dated 5 January 2012 of the Housing and Urban Development Department contemplates that several steps were still to be taken including the transfer to the road widening portion to Chennai Metropolitan Development Authority, the issuance of an NOC by the Sewerage Board and the fulfillment of all requisite conditions under the development regulations. Moreover, even after compliance with those conditions, the appellant had to process the grant of planning permission. The letter of demand that was issued by the appellant on 27 March 2012 similarly required the fulfillment of several conditions precedent upon which the application for the grant of planning permission would be considered.

24. On 27 March 2012, while issuing a demand notice to the respondent, it was made clear by the appellant that the planning permission was still to be issued. The submission of the application for permission and the steps taken by the respondent to comply with the conditions and the deposit of the charges did not confer a vested right in the respondent for the grant of planning permission. The grant of planning permission would only ensue upon the appellant scrutinizing the application and determining that the permissions which were sought were in accordance with the development regulations and all other planning requirements holding the field. Before the planning permission was issued, the revised charges for Premium FSI came to be enforced. Once the revised charges came into force

with effect from 1 April 2012, the respondent, as the applicant for planning permission, was bound to pay the revised charges. As on 1 April 2012, the respondent had no planning permission in its favour. The submission of the respondent that planning permission was issued in May 2012 evidently will not advance the case of the respondent. The grant of any permission post the revision of the Premium FSI charges would necessarily be subject to the revised charges. Hence, in raising the demand on the basis of the revised charges on 22 August 2012, the appellant was acting in accordance with law.

25. The principle which we have adopted accords with a consistent line of precedent of this Court. In *State of Tamil Nadu v Hind Stone*[11], Justice O Chinnappa Reddy speaking for a Bench of two learned judges of this Court, while interpreting the provisions of Rule 2 (A) of the Mines and Minerals (Regulation and Development) Act 1957 observed:

> "13...While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist."

> The same principle was followed by another two judge Bench of this Court in *Howrah Municipal Corporation v Ganges Rope Co. Ltd*[12]. . Justice D M Dharmadhikari speaking for the court held :

> "17...The statutory provisions regulating sanction for construction within the municipal area are intended to ensure proper administration of the area and provide proper civic amenities to it. The paramount considerations of regulatory provisions for construction activities are public interest and convenience. On the subject of seeking sanction for construction, no vested right can be claimed by any citizen divorced from public interest or public convenience."

> This Court held that the provisions contained in the Howrah Municipal Corporation Act 1980 contemplate an express sanction before a person can be allowed to construct or erect a building. Hence, in ordinary course, no vested right is created merely by the submission of an application for sanction to construct a building. Adverting to the decision in *Usman Gani J. Khatri of Bombay v Cantonment Board*[13] , the Court held thus:

> "30. This Court, thus, has taken a view that the Building Rules or Regulations

prevailing at the time of sanction would govern the subject of sanction and not the Rules and Regulations existing on the date of application for sanction."

In *Commissioner of Municipal Corporation, Shimla v Prem Lata Sood* [14], Justice S B Sinha speaking for a two judge Bench observed thus:

"30... even in the order of sanction passed in favour of the respondents by the State, a condition was imposed that before undertaking the development activities by way of erection of the building, the respondents would take the requisite sanction from the Municipal Corporation. Even if such a condition had not been imposed, the provisions of the Municipal Corporation Act, as noticed hereinbefore, would operate.

36. It is now well settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra." The same view has been taken by a Bench of three judges of this Court in New *Delhi Municipal Council v Tanvi Trading and Credit Private Limited*[15].Justice J M Panchal speaking for the court held :

"39. It is well settled that the law for approval of the building plan would be the date on which the approval is granted and not the date on which the plans are submitted. This is so in view of para 24 of the decision of this Court in Usman Gani J. Khatri v. Cantonment Board [(1992) 3 SCC 455] . It would not be out of place to mention that on 7-2-2007, the Master Plan, 2021 has been approved in which the LBZ guidelines have been incorporated and since the plan submitted by the respondents was not approved up to the date of coming into force of Master Plan of 2021, the LBZ guidelines will apply with full force to the plan submitted by the respondents and the plan which is contrary to the LBZ guidelines could not have been directed to be sanctioned."

26. Mr Rana Mukherjee, learned Senior Counsel appearing on behalf of the respondent sought to make a distinction on the ground that this principle will apply as regards regulatory aspects of the development regulations, not in regard to the demand of Premium FSI charges. We are unable to accept the contention simply because the demand on account of Premium FSI charges arises upon the grant of planning permission to avail of Premium FSI. The respondent, as the developer, is liable to pay the revised charges which are applicable post 1 April 2012 when planning permission has been granted. Learned counsel for the respondent also relied on the decision in *Union of India v Mahajan Industries Ltd.*[16] . The case is clearly distinguishable since the judgment of this Court adverted to the position which was laid down in a judgment of the Delhi High Court that the "crucial date" for calculating conversion charges has to be the date of the receipt of the application for conversion. Significantly, the counsel for the Union of India did not contest the correctness of the view of the High Court in that regard. The factual situation in the present case is clearly distinguishable.

27. For the above reasons, we allow these appeals in part by setting aside the impugned judgment and order of the High Court insofar as it quashed the demand raised by the appellant on 22 August 2012 for the levy of Premium FSI charges.

28. The appellant, in our view, was justified in demanding Premium FSI charges at the revised rates and would be entitled to enforce its demands. However, we maintain the order of the High Court insofar as the demand for I & A charges is concerned.

29. The appeals are disposed of. There shall be no order as to costs.

Judgment Referred.

[1]*I & A* [2]*Premium FSI* [3]*DR*
[4] *The Planning Act 1971* [5]*The Sewerage Board* [6]*NOC*
[7]*The Rules 2008* [8]*(2014) 5 SCC 0199*
[9] *48. Restrictions on buildings and lands, in the area of the planning authority.- On or after the date of the publication of the resolution under sub-section (2) of section 19 or of the notice in the Tamil Nadu Government Gazette under section 26, no person other than any State Government or the Central Government or any local authority, shall, erect any building or make or extend any excavation or carry out any mining or other operation, in, on, over or under any land or make any material change in the use of land or construct, form or layout any work except with the written permission of the appropriate planning authority and in accordance with the conditions, if any, specified therein.*
[10]*Regulation 02006* [11]*(1981) 2 SCC 0205* [12]*(2004) 1 SCC 0663*
[13]*(1992) 3 SCC 0455* [14]*(2007) 11 SCC 0040* [15]*(2008) 8 SCC 0765*
[16]*(2005) 10 SCC 0203*