BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH

Original Application No. 62 of 2020 (WZ)

DagadkhanAsanghatitKamgarVikas Parishad, Maharashtra **...Applicant**

Versus

State of Maharashtra &Ors. **...Respondent(s)**

ADDITIONAL AFFIDAVIT ON BEHALF OF RESPONDENT NO. 6 PUNE MUNICIPAL CORPORATION–

1. I am Asha Sampat Raut, Age 45 years, Dy. Commissioner, Solid Waste Department, Pune Municipal Corporation. I state that I am conversant with the facts of the case and competent to swear this affidavit thereof.

2. I state that Survey No. 1419 village Wagholi, Pune admeasuring almost 80 R i.e.1.9 Acres of land is the subject matter of this Application herein after referred to as **'Site'** for the sake of convenience. This area was outside the limit of PMC and was included in the limits of PMC on 30/06/2021. Hereto annexed and marked as **Annexure "A"** is the copy of Notification dated 30/06/2021 issued by Government of Maharashtra.

3. I state that the site in question was earlier within the limits of Grampanchayat Wagholi Respondent No. 4 and thereafter on

14/07/2021 Pune Metropolitan Region Development Authority (PMRDA) Respondent No. 5 was notified as a Special Planning Authority for the areas including Village Wagholi. Hereto annexed and marked as **Annexure "B"** is copy of notificationissued by Government of Maharashtra dated 14/07/2021.

4. I state that Swachh Sanstha, is a body working under Pune Municipal Corporation which has appointed waste collectors for collecting segregated waste from door-to-door at Village-Wagholi after the merger. The collected waste is transported to waste processing plants within PMC limits by using PMC vehicles. I state that this fact was also recorded in the order dated 13/12/2022 by this Hon'ble Tribunal in this present Application.

5. I state that in regards to the legacy waste PMC has almost cleared legacy waste at site.

6. I state that vide order dated 13/12/2022 the Hon'ble Tribunal has passed the following order:-

"From the reply affidavit Respondent No. 6, it appears that steps for clearing the legacy waste as well as MSW are being taken since the merger, but the question arises as to who should be held responsible for the earlier violations i.e. the violations committed during the period from 08.04.2019 to

June 2021. It is apparent that the Gram Panchayat at Village Wagholi/Respondent No. 4 is no longer in existence because of it's merger with the PMC, therefore, we are unable to give any finding as to whether the liabilities of Respondent No. 4 would devolve upon the succeeding body i.e. PMC or not. The learned Counsel for the Respondent No. 6 is directed to specify in this regard the clear position of law and other Respondents may also bring the position of law in this regard before this Tribunal including the Applicant so that we may pass appropriate order with regard to the realization of the compensation amount for earlier violations."

7. I state that the site in question is still in the possession and ownership of the State Government. Respondent No. 6 PMC vide its letter dated 10/02/2022 has requested the Collector Pune to allot the site in question to PMC to establish a Solid Waste Processing Plant having capacity of processing 50 MT of waste per day. Respondent No. 6 is following up with the Collector Office for allotment of this land to PMC for establishing Solid Waste Plant.It is stated that the said site is not in the ownership and possession of PMC as on date and belongs to the State of Maharashtra, therefore it is submitted that the liability to pay the Environment Compensation shall not cast upon Respondent No. 6 PMC.

8. I state that Respondent No. 6 PMC has already spent more than Rs. 25,00,000/- in the process of transportation, processing and clearing the legacy waste at the site. This shows that PMC is taking genuine efforts in providing a clean environment to the residents of Wagholi. Therefore it is submitted that the liability to pay the Environment Compensation shall not cast upon Respondent No. 6 PMC.

9. I state that PMRDA Respondent No. 5 is the Special Planning Authority for the Village Wagholi which is granting permission for construction in this area even today as per the Maharashtra Government Resolution dated 14/07/2021 and is also collecting Development Charges for sanctioning the plans. It is difficult for PMC to provide civic amenities to these villages without financial aid from the State Government or without receiving the Development Charges and other charges required for development of these civic amenities. I state that Respondent No. 5 PMRDA is collecting Development Charges under section 124-A of the Maharashtra Regional Town Planning Act, 1966 for granting permission for construction in these villages even today.

Chapter VI A,Section 124-A,MRTP Act, 1966 - LEVY OF DEVELOPMENT CHARGE

(1) Subject to the provisions of this Act, the Planning Authority or the Development Authority (hereinafter in

this Chapter collectively referred to as "the Authority"), shall levy within the area of its jurisdiction development charge on the institution or use or change of use of any land or building, or development of any land or building, for which permission is required under this Act, at the rates specified by or under the provisions of this Chapter: Provided that, where land appurtenant to a building is used for any purpose independent of the building, development charge may be levied separately for the building and the land.

(2) The development charge shall be leviable on any person who institutes or changes the use of any land or undertakes or carries out any development.

10. I state that the Hon'ble Bombay High Court in a reported Judgment SCC online, 2005(4)Mh.L.J.] Solapur P.&B. Asso. Socy. Vs. State of Maharashtra 445 has held that :-

"10. The Development Charge leviable under Chapter VI-A is a fee that is imposed in order to enable the Authority to provide public amenities within its area and for the maintenance and improvement of the area under its jurisdiction. An institution of use, a change of use or the development of lands and buildings falling within the territorial limits of the jurisdiction of a Planning Authority or a Development Authority places demands on the civic amenities which the authority is required by law to

provide."Hereto annexed and marked as **Annexure "C"**is copy of the Judgment.

11. I state that the contribution towards the Development Charges is therefore relatable to the amenities provided by the authority within the area of its jurisdiction. In the present case it is Respondent No. 5 PMRDA who is collecting the Development Charges for this area. Therefore it is submitted that the liability to pay the Environment Compensation shall not cast upon Respondent No. 6 PMC in the present case.

12. It is humbly submitted that this Hon'ble Tribunal may direct:-

    a. The State Government to allot Survey No. 1419 village Wagholi Pune to PMC to establish a Solid Waste Processing Plant having capacity of processing 50 MT per day at the earliest.

    b. The Collector Pune to allow PMC to continue this site as a Feeder Point till the allotment of the abovementioned site.

    c. The amount of environment compensation assessed by MPCB Respondent No. 2 shall be granted to Respondent No. 6 PMC for establishing Solid Waste Processing Plant at this site.

Whatever is stated here in above is true and correct to the best of my knowledge, belief and information and nothing material is concealed therein.

Pune

Date: 27/03/2023

NOTARY
Mrs.Krupa B. Patil
B.A.LL.B.
PUNE DISTRICT
Reg.No.4327
Exp.Dt-12/07/2027
GOVT. OF INDIA

उप आयुक्त
घनकचरा व्यवस्थापन
पुणे महानगरपालिका

Affiant

VERIFICATION

I, Asha Sampat Raut, Age 45 years, Dy.Commissioner, Solid Waste Management Department, Pune Municipal Corporation, do hereby state on solemn affirmation that what is stated in this Affidavit in paragraphs 1 to 11 is true and correct on the basis of documents and records available with me and information given to me.

Solemnly affirmed at Pune.

Date: 27/03/2023

उप आयुक्त
घनकचरा व्यवस्थापन
पुणे महानगरपालिका

Deponent/Affiant

NOTARY
Mrs.Krupa B. Patil B.A.LL.B. PUNE DISTRICT Reg.No.4327 Exp.Dt.
GOVT. OF INDIA

BEFORE ME
MRS. KRUPA B. PATIL
ADVOCATE & NOTARY
GOVT. OF INDIA
PUNE DISTRICT

NOTED & REGD.
Sr.No. A091/23

27 MAR 2023

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Annexure "A"

NOTIFICATION

Urban Development Department,
Mantralaya,
Madam Cama Road,
Hutatma Rajguru Chowk,
Mumbai - 400 032.
Dated the 30th June 2021.

Maharashtra Municipal Corporations Act 1949.

No.PMC-2020/C.R.322/UD-22- Whereas, by the Government Notification, Urban Development Department, No.PMC-2020/ C.R.322/UD-22, dated the 23rd December 2020, published in the Maharashtra Government Gazette, Extraordinary, Part-1A, Central Sub-Division, dated the 23rd December 2020, issued in pursuance of the provisions of sub-section (4) of section 3 of the Maharashtra Municipal Corporations Act (LIX of 1949) (hereinafter referred to as "the said Act"), the Government of Maharashtra had announced it's intention to issue a notification in exercise of the powers conferred by clause (a) of sub-section (3) of section 3 of the said Act, with a view to alter the existing limits of the Municipal Corporation of the City of Pune (hereinafter referred to as "the said Municipal Corporation"), so as to include therein the area specified in Schedule-I appended to the said notification;

And whereas, the Government has considered the objections and suggestions received pursuant to the said notification within the period specified therein;

And whereas, having regard to the factors mentioned in clause (2) of article 243-Q of the Constitution of India, it is considered expedient by the State Government to alter the limits of the said Municipal Corporation, so as to include therein the areas of villages specified in Schedule -I appended hereto;

Now, therefore, in exercise of the powers conferred by clause (a) sub-section (3) of section 3 of the Maharashtra Municipal Corporations Act (LIX of 1949), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby, after consultation with the said Municipal Corporation and after previous publication of the proposed

notification as required by sub-section (4) of the said section 3, alters the limits of the said Municipal Corporation by including therein the areas mentioned in the Schedule-I appended hereto and declares that the revised boundaries of the said Municipal Corporation after inclusion of the area mentioned in Schedule-I shall be such as specified in Schedule-II appended hereto.

Schedule-I

The Description of area to be included in the City of Pune

Sr. No.	Name of the revenue village	Area of the villages to be included in area of the city of Pune
(1)	(2)	(3)
1.	Mhalunge	Entire area of revenue village
2.	Sus	Entire area of revenue village
3.	Bawdhan Budruk	Entire area of revenue village
4.	Kirkitwadi	Entire area of revenue village
5.	Pisoli	Entire area of revenue village
6.	Kondve – Dhawade	Entire area of revenue village
7.	Kopare	Entire area of revenue village
8.	Nanded	Entire area of revenue village
9.	Khadakwasala	Entire area of revenue Village
10.	Manjari Budruk	Entire area of revenue Village
11.	Narhe	Entire area of revenue Village
12.	Holkarwadi	Entire area of revenue Village
13.	Autade- Handewadi	Entire area of revenue village
14.	Wadachiwadi	Entire area of revenue village
15.	Shewalewadi	Entire area of revenue village
16.	Nandoshi	Entire area of revenue village
17.	Sanasnagar	Entire area of revenue village
18.	Mangdewadi	Entire area of revenue village
19.	Bhilarewadi	Entire area of revenue village
20.	Gujar Nimbalkarwadi	Entire area of revenue village
21.	Jambhulwadi	Entire area of revenue village
22.	Kolewadi	Entire area of revenue village
23.	Wagholi	Entire area of revenue village

Schedule-II

The revised boundaries of the City of Pune.

Sr. No. (1)	Name of the revenue village (2)	Area of the villages to be included in area of the city of Pune
1.	North	Revenue Boundaries of Kalas, Dhanori, Lohagaon village.
2.	North - East	Revenue Boundaries of Lohagaon, Wagholi village
3.	East	Revenue boundaries of Manjri Budruk, Shewalewadi, Fursungi Village.
4.	South - East	Revenue Boundaries of Uruli Devachi Holkarwadi, Autade- Handewadi Village.
5.	South	Revenue Boundaries of Dhayari, Wadachiwadi, Yewalewadi, Kolewadi, Bhilarewadi village.
6.	South - west	Revenue Boundaries of Nanded, Khadakwasla, Nandoshi, Kopare village.
7.	West	Revenue Boundaries of Kondhawe-Dhawade, Bawdhan Budruk, Bawdhan Khurd, Mhalunge, Sus village.
8.	North - West	Revenue boundaries of Baner, Balewadi village & old limits of Pune Municipal Corporation.

By order and in the name of the
Governor of Maharashtra,

(S.J. Moghe)
Deputy Secretary to Government.

Annexure "B"

NOTIFICATION
GOVERNMENT OF MAHARASHTRA

Urban Development Department
Madam Kama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai – 400 032.
Dated -14.07.2021.

The Maharashtra Regional and Town Planning Act, 1966

No.TPS-1821/1167/CR-98/2021/UD-13 :- Whereas, in exercise of the powers conferred by clause (c) of the Article 243-P of the Constitution of India and by clause (c) of section 2 of the Maharashtra Metropolitan Planning Committee (Constitution and Functions) Act, 1999, the Government of Maharshtra in Urban Develoment Department vide Notification No.TPS-1899/1191/CR-80/ 99/UD-13, dated 23.07.1999, declared some area around Pune City, as the "Pune Metropolitan Area" for the purpose of Part IX-A of the Constitution of India;

And whereas, in exercise of the powers conferred by sections 41A, 42C and 42F of the said Act, the Government of Maharshtra vide Notification No.TPS-1815/1204/13/CR-87/15/UD-13, dated 31.03.2015 declared the Pune Metropolitan Area as a "Pune Metropolitan Region Development Area, under section 42A of the said Act and thereof constituted "Pune Metropolitan Area Region Development Authority" (hereinafter referred to as "the said Area Development Authority"), for this declared area;

And whereas, Government of Maharashtra vide Notification dated 04/12/2015, has extended the limits and revised the limits of Pune Metroplitan Region Area. Also, vide Notification dated 10/02/2016, Government has further extended the limits and revised the limits of Pune Metroplitan Region Area (hereinafter referred to as "the said Metropolitan Area");

And whereas, the Governor of Maharshtra has promulgated the Maharashtra Metropolitan Region Development Authority Ordinance, 2016 (Mah. Ord. XI of 2016) (hereinafter referred to as "the said Ordinance") on 13.06.2016, to provide for establishment of the Authorities for certain areas declared as Metropolitan Areas under clause (c) of section 2 of the Maharashtra Metropolitan Planning Committees (Constitute and Functions) (Continuatioin of Provisions) Act, 1999 (Mah. V of 2000), for the purpose of co-ordinating and supervising the proper orderly and rapid development of the said area in such regions and of executing projects and schemes for such development, and to provide for connected therewith or incidental thereto; which is thereafter converted into the Maharashtra Metropolitan Region Development Authority Act, 2016 (Mah. Act 3 of 2017);

And whereas, in exercise of the powers conferred by sub-section (1) of section 3 of the said Ordinance and Section 42-A, 42-C, 42-F, of the said act, vide Government in Urban Development Department Notification No.PRD-3316/CR-54/UD-7, dated 11.07.2016, Pune Metropolitan Region Development Authority has been established for the said Metropolitan Area, more specifically described in the Schedule appended thereto (hereinafter referred to as "the said Region Development Authority") and above mentioned notifications dated 31.03.2015, dated 04/12/2015 & dated 10/02/2016 has been rescinded;

And whereas, for proper and well planned development of the said Metropolitan Area, in exercise of the powers conferred by section-40(1)(d) of the said Act, the Government in Urban Development Department, vide Notification No.TPS-1817/CR-173/17/UD-13, dated 18.01.2018, has specified the area, more specifically described in the Schedule appended thereto, to be the "Notified Area" for Pune Metropolitan Region Development Authority and appointed Pune Metropolitan Region Development Authority as Special Planning Authority for such notified area from the date of its establishment i.e. 31/03/2015;

And whereas, the Government of Maharashtra vide Urban Development Department Notification No.PMC-2020/C.R.322/UD-22, dated 30.06.2021 has altered the limits of Pune Municipal Corporation by including the 23 villages (hereinafter referred to as "the said 23 villages") as mentioned in the Schedule-I appended therein;

And whereas, as per the proposal of the said Region Development Authority, the said 23 villages are included in Regional Plan and no secondary and collector roads are proposed in the Regional Plan. The roads are developed as per land availability and with no planned alignment also widths are not as per requirement. As reservations for various public purposes are not proposed in the Regional Plan, no public amenities are developed. Thus area of the said 23 villages is of undeveloped nature and development in this area is unplanned and in uncontrolled manner;

And whereas, considering the above facts, the Governement is of the opinion that, the undeveloped area of the said 23 villages in Pune Municipal Corporation limits should be notified and for this area Pune Metropolitan Region Development Authority should be appointed as a Special Planning Authority;

Now therefore, in exercise of the powers conferred by section 40(1) and section 40(1)(d) of the said Act, the Government of Maharashtra hereby declares that -

"Area of the said 23 villages in the Pune Municipal Corporation limits, as mentioned in the Appendix - A appended hereto, is notified and Pune Metropolitan Region Development Authority is appointed as the Special Planning Authority for this area.

Appendix - A

Sr. No.	Name of Village	Area
1	Mhalugne	Entire area of revenue village
2	Sus	Entire area of revenue village
3	Bawdhan Budruk	Entire area of revenue village
4	Kirkitwadi	Entire area of revenue village
5	Pisoli	Entire area of revenue village
6	Kondve - Dhawade	Entire area of revenue village
7	Kopare	Entire area of revenue village
8	Nanded	Entire area of revenue village
9	Khadakwasala	Entire area of revenue village
10	Manjari Budruk	Entire area of revenue village
11	Narhe	Entire area of revenue village
12	Holkarwadi	Entire area of revenue village
13	Autade - Handewadi	Entire area of revenue village

14	Wadachiwadi	Entire area of revenue village
15	Shewalewadi	Entire area of revenue village
16	Nandoshi	Entire area of revenue village
17	Sanasnagar	Entire area of revenue village
18	Mangdewadi	Entire area of revenue village
19	Bhilarewadi	Entire area of revenue village
20	Gujar Nimbalkarwadi	Entire area of revenue village
21	Jambhulwadi	Entire area of revenue village
22	Kolewadi	Entire area of revenue village
23	Wagholi	Entire area of revenue village

The Plan showing boundaries of the said 23 villages areas is kept open for inspection by the Public at the following offices in office time on all working days

1) The Commissioner, Pune Municipal Corporation, Pune.
2) The Metropolitan Commissioner, Pune Metropolitan Regiona Development Authority, Pune.
3) The Joint Director of Town Planning, Pune Division, Pune.
4) Assistant Director of Town Planning, Pune Branch, Pune.

This Notification is made available on the Government of Maharashtra website www.maharashtra.gov.in (Acts/Rules)

By order and in the mname of the Governor of Maharashtra,

URBAN DEVELOPMENT DEPTT. * MANTRALAYA, MUMBAI-32

(Noreshwar R. Shende)
Joint Secretary, Govt. of Maharashtra

Annexure "C"

case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

13. Once the finding has been recorded by the Appellate Court that the plaintiff was not ready and willing to perform his part of contract, it is not possible to accept the submission of the learned counsel for the plaintiff that it is the defendant respondent who has committed the breach of the contract and since he has been benefited by the subsequent transaction by the amount of Rs. 4,000/-, he should be called upon to pay that much amount also to the plaintiff by way of compensation in view of the provisions of section 73 of the Indian Contract Act. Consequently, this Court do not find any merit in this appeal and is of the considered opinion that no substantial question of law is involved in this appeal and the same stands dismissed with cost throughout.

Appeal dismissed.

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, SECTION 124A(1)

(A. P. Shah and Dr. D. Y. Chandrachud, JJ.)

SOLAPUR PROMOTERS AND BUILDERS ASSOCIATION SOCIETY and another *Petitioners.*

vs.

STATE OF MAHARASHTRA and others *Respondents.*

(a) Maharashtra Regional and Town Planning Act (37 of 1966), Chapter VI-A (Inserted by Act 16 of 1992), S. 124A(1) — *Development charge leviable under section 124A(1) is a fee to be imposed in order to enable the authority to provide public amenities in the area of its jurisdiction for the maintenance and improvement of that area — State legislature is competent to impose a fee under Article 246(3) read with Entries 5 and 6 of the State list.*

The Development Charge leviable under Chapter VI-A of the Maharashtra Regional and Town Planning Act is a fee that is imposed in order to enable the Authority to provide public amenities within its area and for the maintenance and improvement of the area under its jurisdiction. An institution of use, a change of use or the development of lands and buildings falling within the territorial limits of the jurisdiction of a Planning Authority or a Development Authority places demands on the civic amenities which the authority is required by law to provide. The contribution towards the Development Charge is therefore relatable to the amenities which are provided by the Authority of roads, parks, hospitals, water supply, electricity, sewerage and drainage amongst other public services. These

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W. P. No. 3410 of 1993 decided on 13-6-2005. (Bombay)

are under section 2(2) utilities, services and conveniences provided by the Authority within the area of its jurisdiction. The fee is imposed in order to enable the Authority to provide public amenities in the area of its jurisdiction and for the maintenance and improvement of that Area. The fee is in aid of the regulatory powers which are conferred upon the Planning Authority and the Development Authority. The nature of the charge and the conditions imposed by the legislature on the utilization of the proceeds make it abundantly clear that the imposition is not a tax but a fee. Once it is established that what is levied under section 124A is a fee, there is no merit in the challenge to the enactment of Chapter VI-A on the ground of the legislative competence of the State legislature. The State legislature did have the power to impose a fee under Article 246(3) read with Entries 5 and 6 of the State list. (Paras 10, 13 and 14)

(b) Maharashtra Regional and Town Planning Act (37 of 1966), Chapter VI-A (Inserted by Act 16 of 1992), S. 124B and Constitution of India, Art. 14 — *Classification based on the use of lands and buildings for the purpose of assessing a Development Charge — Classification is based on intelligible differentia having a nexus to the object sought to be achieved — No violation of Article 14.*

It is evident from the legislation that the imposition of a Development Charge has taken into account the nature of the user of lands and buildings, the nature and location of the urban area within which the land or as the case may be the buildings, are situated and the nature of the development activity that is sought to be pursued. This classification is based on an intelligible differentia which has a rational nexus to the amenities which a Planning Authority or Development Authority provides within the area under its jurisdiction and which in turn generates a need for resources to fund and maintain the amenities. Therefore there is no merit in the challenge on the ground of Article 14. (Paras 16, 17 and 20)

(c) Maharashtra Regional and Town Planning Act (37 of 1966), Chapter VI-A (Inserted by Act 16 of 1992), S. 124H(b) — *Provision requiring deposit of amount of assessment pending disposal of the appeal — Not arbitrary.*

Under section 124H(b) of the Maharashtra Regional and Town Planning Act the appeal shall not be entertained unless the amount claimed in the notice of assessment from the appellant together with the interest, if any due thereon, has been deposited in the office of the authority. The requirement of deposit where permission to develop has been granted cannot be regarded as an arbitrary restriction on the right of the developer. A sufficient safeguard is available to the developer by requiring the authority to pay interest at the rate of 18% per annum in the event that any amount is held to be refundable to the developer upon the conclusion of the appeal. The provision for deposit cannot be regarded as rendering the right of appeal illusory. (Para 21)

(d) Maharashtra Regional and Town Planning Act (37 of 1966), Chapter VI-A (Inserted by Act 16 of 1992), S. 124B(2) — *Power of the Authority to enhance the Development charges — Held, neither arbitrary nor in the realm of the unfettered discretion of the authority.* (Para 22)

(e) Maharashtra Regional and Town Planning Act (37 of 1966), Chapter VI-A (Inserted by Act 16 of 1992), S. 124F — *Power to grant exemption under section 124F — Provision is neither arbitrary nor invalid.* (Para 23)

For petitioners : *G. S. Godbole*
For State : *Nitin Deshpande, AGP*
For respondent No. 3 : *Nitin Jamdar*

List of cases referred :

1. *P. M. Ashwathanarayana Setty vs. State of Karnataka, AIR 1989 SC 100* (Para 11)
2. *Sreenivasa General Traders vs. State of A.P., (1983) 4 SCC 353* (Para 11)
3. *City Corpn. of Calicut vs. Thachambalath Sadasivan, (1985) 2 SCC 112* (Para 11)
4. *Sirsilk Ltd vs. Textiles Committee, 1989 Supp (1) SCC 168* (Para 11)
5. *Commr. and Secy. to Govt., Commercial Taxes and Religious Endowments Dept. vs. Sree Murugan Financing Corpn., (1992) 3 SCC 488* (Para 11)
6. *Secy. to Govt. of Madras vs. P. R. Sriramulu, (1996) 1 SCC 345* (Para 11)
7. *Vam Organic Chemicals Ltd. vs. State of U.P., (1997) 2 SCC 715* (Para 11)
8. *Research Foundation for Science, Technology and Ecology vs. Ministry of Agriculture, (1999) 1 SCC 655* (Para 11)
9. *Secunderabad Hyderabad Hotel Owner's Assn vs. Hyderabad Municipal Corpn., (1999) 2 SCC 274* (Para 11)
10. *B.S.E. Brokers' Forum vs. Securities and Exchange Board of India, (2003) 3 SCC 482* (Para 12)
11. *Sona Chandi Oal Committee vs. State of Maharashtra, (2005) 2 SCC 345* (Para 12)
12. *R. K. Garg vs. Union of India, (1981) 4 SCC 675* (Para 15)
13. *Spences Hotel Pvt. Ltd. vs. State of West Bengal, (1991) 2 SCC 154* (Para 15)
14. *State of Kerala vs. Haji K. Haji K. Kutty Naha, AIR 1969 SC 378* (Para 19)

ORAL JUDGMENT

DR. D. Y. CHANDRACHUD, J. :— The constitutional validity of the Maharashtra Regional and Town Planning (Amendment) Act, 1992 – Maharashtra Act 16 of 1992 – has been challenged in these proceedings. By this amendment, the State legislature inserted Chapter VI-A into the provisions of the parent Act in order to provide for the levy, assessment and recovery of a Development Charge. Sub-section (1) of section 124A enacts the levy of a Development Charge in the following terms :

> "**124A.** (1) Subject to the provisions of this Act, the Planning Authority or the Development Authority (hereinafter in this Chapter collectively referred to as "the Authority"), shall levy within the area of its jurisdiction development charge on the institution of use or change of use of any land or building, or development of any land or building, for which permission is required under this Act, at the rates specified by or under the provisions of this Chapter :
>
> Provided that, where land appurtenant to a building is used for any purpose independent of the building, development charge may be levied separately for the building and the land."

2. By virtue of the provisions of sub-section (2) the Development Charge is leviable on any person who "institutes or changes the use of any land or undertakes or carries out any development". On 20th January, 1994, a further amendment enacted by the State legislature in the form of Maharashtra Act 10 of

1994 received the assent of the Governor. Insofar as is material, a proviso was introduced into the provisions of section 124A to stipulate that no Development Charge shall be leviable where a development permission had already been granted or is deemed to have been granted by a Planning Authority or Development Authority before 10th August, 1992, being the date of commencement of the Amending Act of 1992 by which the provisions of Chapter VI-A were introduced. As a result of the amendment therefore, the imposition of the Development Charge has been made prospective with effect from 10th August, 1992.

3. A consideration of the provisions of the Act would be required in the context of the challenge before the Court to the validity of the legislation. Before doing so it would be appropriate to note the broad frame work of the other provisions of Chapter VI-A. Section 124B provides for a classification of lands and buildings according to user and empowers the levy and collection by the Authority of a Development Charge at the minimum rates specified in the Second Schedule. The Authority is empowered to enhance the rates prescribed subject to the maximum specified in Column 5 of the Second Schedule. Before doing so, the Authority has to pass a special resolution approving regulations and to obtain the previous sanction of the State Government. Section 124E provides for the assessment and recovery of the Development Charge. Section 124F provides for exemptions; section 124G and H for appeals and section 124J for a Development Fund. Section 124K empowers the authority to take steps to ensure the stoppage of development or of a change of use where this has been commenced without the payment of the Development Charge.

4. The First Petitioner before the Court in these proceedings under Article 226 of the Constitution is an association, registered under the Societies' Registration Act, 1860 of promoters and builders in the city of Solapur. The provisions of Chapter VI-A have been challenged in these proceedings on several grounds, namely :—

(i) The State legislature does not have the legislative competence to enact sections 124A and 124B, there being no head of legislative power in the State List of the Seventh Schedule to the Constitution with reference to which a *tax on development activity can be imposed;* (ii) If the Development Charge is treated as a fee, there is no nexus between the fee that is charged and the services that are rendered. The imposition of the fee is not rational and the recovery is not co-related with the services which an Authority is likely to render; (iii) *The* imposition of a development charge at a flat rate – in the present case for the city of Solapur – is violative of Article 14 of the Constitution on the ground that unequals are treated as equals. The ready reckoner published under the Bombay Stamp (Determination of Market Value of Property) Rules 1981 shows that market prices of immovable property vary from place to place within the city of Solapur; (iv) The imposition of a Development Charge at a flat rate for municipal areas regardless of the location of land within the area is arbitrary and violative of Article 14; (v) section 124B(3) which empowers the local authority to reduce or enhance the rate at which the Development Charge will be imposed confers arbitrary and unregulated powers upon the local authority for which no guidelines have been prescribed; (v) The power that is conferred upon the State

Government to grant an exemption under section 124F is unchannelised and unbridled; (vi) The provisions of section 124H which require a deposit before an appeal can be entertained under section 124G by the State Government, of the entire amount claimed in the notice of assessment, are arbitrary.

5. The State Government has opposed the petition. An affidavit in reply has been filed on behalf of the Urban Development Department in companion Writ Petition 5116 of 1992 in which the background leading up to the levy of a Development Charge has been set out. Since the companion petition has been set down for hearing together with this petition and having regard to the common challenges which arise for consideration before the Court, the affidavit in reply has by consent been read in answer to the challenges raised in these proceedings.

6. The circumstances in which the State legislature came to enact Chapter VI-A to provide for the levy, assessment and recovery of a Development Charge have been adverted to in the Statement of Objects and Reasons. In order to appreciate that background, it would be necessary to extract therefrom :

> "In the State of Maharashtra there is a distinct and discernible trend towards urbanization. The bulk of urban population in the State is concentrated in and around Greater Bombay as also the other cities or towns for which municipal corporations or municipal councils have been constituted. This process of rapid urbanisation has brought in its wake human settlements and in turn the development of virgin or undeveloped lands in the form of buildings, to accommodate such settlements resulting in haphazard development of such lands without the necessary infrastructure of roads, water supplies, sewerage, drainage of storm water, electricity and street lights, etc.
>
> 2. The Maharashtra Regional and Town Planning Act, 1966, has been enacted to provide for planned development of urban areas, by providing, inter alia, for constitution of Regional Planning Boards, for preparation of Development plans and creation of new towns by means of constitution of Special Planning and Development Authorities. All these Plans and Schemes being capital intensive, the said authorities have not been able to achieve the desired results, mainly on account of lack of adequate funds for effective implementation of such Development Plans or Town Planning Schemes. It has, therefore, become imperative to mobilize additional resources for being placed at the disposal of Planning or Special Planning or Development Authority constituted under the said Act for effective implementation of the provisions of the said Act and to provide for proper amenities and facilities for the healthy growth of these cities and towns. The existing provisions of the Maharashtra Regional and Town Planning Act do not contain any provision for levy and collection of development charge by such Authority. It is, therefore, decided to suitably amend the said Act to provide for levy assessment and recovery of development charge by such authority on institution of use or change of use, of any land or building, or development of any land or building, for which permission is required under the said Act. Accordingly, a new Chapter VIA is being inserted containing appropriate provisions for such levy, assessment and collection of development

charge, by the Planning or the Development Authority, initially at the minimum rates specified in the Second Schedule which is being added to the Act now and then later on at the rates to be prescribed by the said Authority, by framing necessary regulations in this behalf, subject to the minimum and maximum rates of such development charge as specified in the said Second Schedule. The Second Schedule specifies the minimum and maximum rates of development charge with reference to the user of land or building in the area of the different municipal corporations or councils. Other incidental provisions like procedure to be followed before framing of such regulations for prescribing the development charge by the Development Authority, for empowering the Authority to vary the rates of development charge within the limits specified in the Schedule, and provisions for appeal by the aggrieved person against the assessment made by the Authority are also being made in the Act.

3. In order to ensure that the proceeds of the development charge to be levied and collected by the Development Authority are utilised by the said Authority only for the purposes of planned development of the area within its jurisdiction, it is also being provided that a separate fund, namely "Development Fund" shall be created and shown separately in the budget. The Bill also contains certain other consequential and incidental amendments to the Act.

4. The Bill seeks further to amend the Maharashtra Regional and Town Planning Act, 1966, to achieve the above-mentioned objectives."

7. The Maharashtra Regional and Town Planning Act, 1966 was enacted in order "to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards thereunder; to make better provisions for the preparation of Development Plans with a view to ensuring that town planning schemes, are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid." The Statement of Objects and Reasons underlying the enactment of the Amending Act takes due note of the *distinct trend* towards urbanisation in Maharashtra and of the concentration of the urban population in and around Greater Mumbai and other cities and towns in the State. Urbanisation has generated increasing demands for the creation of an infrastructure that would provide basic civic amenities such as roads, water supply, sewerage and electricity. The Act of 1966 envisages the constitution of statutory authorities for the preparation of Development Plans and for the creation of new towns.

8. The creation of a legal framework is not enough in itself. The experience in Maharashtra is not unique for, as elsewhere in the country, the creation of a legal framework for urban development has to be matched by generating resources for planning. Urban planning requires resources to create an infrastructure and to provide amenities commensurate with the large migration from rural areas into cities and towns. The legislature took note of the serious resource constraint that

has emerged and which has to be overcome in order to secure the effective implementation of Development Plans and Town Planning Schemes. Chapter VI-A was therefore introduced in order to provide for a Development Charge which would be utilized *only* for the purposes of the planned development of the area within the jurisdiction of the Authority. The Authority, as section 124A provides, is the Planning Authority or Development Authority. A Planning Authority is defined in section 2(19) to mean a local authority and to include a Special Planning Authority under section 40 or a Slum Rehabilitation Authority for the purposes of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. A Development Authority is defined by section 2(8) as a New Town Development Authority under section 113.

9. The first and basic challenge to the constitutional validity of the provisions of Chapter VI-A proceeds on the foundation that what has been enacted by the legislature is a provision for the levy of a tax; a tax on development which it is urged lies outside the fold of competence of the State legislature. An elaborate body of jurisprudence has evolved on the distinction between a tax and a fee. Later cases emphasise the progressive blurring of that distinction. Sub-section (1) of section 124A provides that the levy is to be by a Planning Authority or Development Authority *within the area of its jurisdiction,* of a Development Charge on the institution of use or change of use of any land or building or development of any land or building for which permission is required under the Act. Three facets emerge from the charging provision. The first is the contemplation by the legislature of the activity that a developer proposes to carry out viz.; the institution of use, change of use or the development of any land or building; the second is the interposition of the regulatory power of the authority whose permission is required for carrying such an activity and, the third, the territorial jurisdiction of the authority to supervise, control and regulate use, the change of use and the development of lands and buildings. Section 124J provides for the creation of a Development Fund into which all the proceeds of the Development Charge have to be credited. Sub-section (3) of section 124J provides that all monies which are credited to the Fund shall be applied *"only for the purposes of providing public amenities in the area and maintenance and improvement of the area under the jurisdiction of the said Authority"*. The expression "amenity" is defined in sub-section (2) of section 2 thus :

> "(2) "amenity" means roads, streets, open spaces, parks, recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works *and includes other utilities, services and conveniences.*" (emphasis supplied)

10. The Development Charge leviable under Chapter VI-A is a fee that is imposed in order to enable the Authority to provide public amenities within its area and for the maintenance and improvement of the area under its jurisdiction. An institution of use, a change of use or the development of lands and buildings falling within the territorial limits of the jurisdiction of a Planning Authority or a Development Authority places demands on the civic amenities which the authority is required by law to provide. The contribution towards the

Development Charge is therefore relatable to the amenities which are provided by the Authority of roads, parks, hospitals, water supply, electricity, sewerage and drainage amongst other public services. These are under section 2(2) utilities, services and conveniences provided by the Authority within the area of its jurisdiction.

11. Mr. Justice M. N. Venkatachaliah (as the Learned Chief Justice then was) speaking for a Bench of three Learned Judges of the Supreme Court in *P. M. Ashwathanarayana Setty vs. State of Karnataka, AIR 1989 SC 100* noted that a fee is "a charge for the special service rendered to a class of citizens by Government or Government agencies and is generally based on the expenses incurred in rendering the services". Decided cases show that the essential character of the impost is that some special service is intended or envisaged as a *quid pro quo* to the class of citizens intended to be benefited by the service. Yet, the law requires only a broad and general correlation between the amount that is raised and the expenses that are involved in providing the services. So long as there is this broad and general correlation the impost would partake the character of a fee even if the identity of the amount is merged in the general revenues of the State and though the special services incidentally provide a benefit to the members of the general public as well. The correlation between the amount that is raised by a fee and the expenses that are incurred need not be examined for ascertaining arithmetical equivalence. The validity of a fee is not preconditioned by every member of the class on which it is imposed receiving a benefit proportionate to the payment which he is required to make. Every individual in the class need not necessarily be in receipt of a direct benefit. A fee has an element of a compulsory exaction, like a tax, in that the class of persons intended to be benefited by a special service has no volition to decline the benefit of the service. A fee does not cease to be one on that ground. These principles emerge from a long line of precedent including the decisions of the Supreme Court in *Sreenivasa General Traders vs. State of A.P., (1983) 4 SCC 353, City Corpn. of Calicut vs. Thachambalath Sadasivan, (1985) 2 SCC 112, Sirsilk Ltd vs. Textiles Committee, 1989 Supp (1) SCC 168, Commr. and Secy. to Govt., Commercial Taxes and Religious Endowments Dept. vs. Sree Murugan Financing Corpn., (1992) 3 SCC 488, Secy. to Govt. of Madras vs. P. R. Sriramulu, (1996) 1 SCC 345, Vam Organic Chemicals Ltd. vs. State of U.P., (1997) 2 SCC 715, Research Foundation for Science, Technology and Ecology vs. Ministry of Agriculture, (1999) 1 SCC 655* and *Secunderabad Hyderabad Hotel Owner's Assn vs. Hyderabad Municipal Corpn., (1999) 2 SCC 274.*

12. In *B.S.E. Brokers' Forum vs. Securities and Exchange Board of India, (2001) 3 SCC 482,* the Supreme Court held that "much ice has melted in the Himalayas" after earlier decisions of the Court and there was a "sea change" in judicial thought on the supposed difference between a tax and a fee. The Court noted that insofar as a regulatory fee is concerned, a service to be rendered is not a condition precedent and the impost does not lose the character of a fee so long as the fee itself is not excessive. A *quid pro quo* in the strict sense is not a *sine qua non* for a fee. In a recent decision in *Sona Chandi Oal Committee vs. State of Maharashtra, (2005) 2 SCC 345,* the Supreme Court repelled a challenge to the levy of an inspection fee under section 9-A of the Bombay Money-Lenders Act,

1946. While adverting to the earlier decisions of the Court, the Supreme Court held thus :

> "So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It was not necessary that service to be rendered by the collecting authority should be confined to the contributories alone. The levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. *Quid pro quo* in the strict sense was not always a *sine qua non* for a fee. All that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered..... it was not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee was being paid..... if one who is liable to pay, received general benefit from the authority levying the fee, the element of service required for collecting the fee is satisfied."

13. These decisions leave no manner of doubt that what has been imposed in the present case is not a tax but a fee. The fee here is imposed in order to enable the Authority to provide public amenities in the area of its jurisdiction and for the maintenance and improvement of that area. The fee is in aid of the regulatory powers which are conferred upon the Planning Authority and the Development Authority. The nature of the charge and the conditions imposed by the legislature on the utilization of the proceeds make it abundantly clear that the imposition is not a tax but a fee. There is absolutely no material to indicate that the levy is excessive, nor has that been substantiated before us.

14. Once it is established that what is levied under section 124A is a fee, there is no merit in the challenge to the enactment of Chapter VI-A on the ground of the legislative competence of the State legislature. Entry 66 of the State list to the Seventh Schedule of the Constitution refers to fees in respect of any of the matters contained in that list, but not including fees taken in any Court. Entries 5 and 6 of the State list are material for the present purpose and they are as follows :

> "5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
>
> 6. Public health and sanitation; hospitals and dispensaries."

Entry 20 of the Concurrent list similarly deals with economic and social planning and Entry 47 thereof deals with fees in respect of any of the matters contained in the list other than fees taken in any Court. The State legislature did have the power to impose a fee under Article 246(3) read with Entries 5 and 6 of the State List. The legislature was within its legislative competence, while enunciating the regulatory powers of Municipal Corporations and other specific local authorities in the State to impose a fee for the institution or change in the use of lands and buildings and for the development of lands and buildings falling

within their territorial jurisdiction. There is in the circumstances no merit in the challenge on the ground of legislative competence.

15. The second ground of challenge is based on Article 14 of the Constitution. While considering this head of challenge the Court cannot but be mindful of the basic premise that in fiscal matters the legislature has a wide latitude to design and enact appropriate measures and to lay down classifications which according to the legislature would be reasonably relatable to the object which each classification is intended to subserve. There may be "crudities, inequities and even possibility of abuse". The Supreme Court held in *R. K. Garg vs. Union of India, (1981) 4 SCC 675,* that constitutionality of legislation must be adjudged with reference to the generality of its provisions. Laws relating to economic activities have to be viewed with a greater degree of latitude than laws which affect civil rights. This precept must apply to laws enacting fiscal impositions for these are but, an intrinsic part of the regulation of economic policy in general. A law providing for a fiscal imposition must, before it can be struck down as violative of a Article 14, be demonstrated to have no reasonable basis to sustain the classification made by the legislature or if the same class of property similarly situated is subject to unequal taxation. "The rule of equality requires no more than that the same means and methods be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances." *[Spences Hotel Pvt. Ltd. vs. State of West Bengal, (1991) 2 SCC 154.]* Fiscal legislation which operates alike on all persons similarly situated within the sphere of its operation is not discriminatory. That however does not prohibit special legislation or legislation limited either in the objects to which it is directed or by the territory within which it is to operate.

16. Section 124B provides for a four fold classification based on the use of lands and buildings for the purpose of assessing a Development Charge. Lands and buildings are classified, according to user, as (i) Industrial; (ii) Commercial (iii) Residential and (iv) Institutional. The legislature has provided that the predominant purpose for which the land and building is used shall form the basis of classification. Sub-section (2) of section 124B enacts the minimum and maximum rates at which the Development Charge can be levied, these being incorporated in the Second Schedule to the Act. The power of the Authority to enhance the rates is subject to the passing of a special resolution approving the regulations and to the previous sanction of the State Government under Sub-section (3) of section 124B. The Second Schedule divides diverse areas of the State into six different categories for the purpose of the levy and collection of the Development Charge. These are (i) Areas under the jurisdiction of the Municipal Corporation of Greater Mumbai; (ii) Areas under the jurisdiction of Municipal Corporations constituted under the Bombay Provincial Corporations Act, 1949 and the Municipal Corporation of Nagpur; (iii) 'A' class Municipal Councils; (iv) 'B' class Municipal Councils; (v) 'C' class Municipal Councils governed by the Maharashtra Municipalities Act, 1965; and (vi) Areas under the jurisdiction of Special Planning Authorities and New Town Development Authorities constituted under the Act. The Second Schedule to the Act provides a further sub-classification into three categories (i) Developmental activities for residential

or institutional use not involving any building or construction operations; (ii) Developmental activities involving only building or construction operations; and (iii) Development of lands for residential or institutional use also involving building or construction operations, as the case may be, for development or for construction. Accordingly, the minimum and maximum range of rates within which Development Charges can be levied have been specified. The minimum and maximum rates for the levy of the Development Charge for industrial and commercial users are one and a half times and two times the minimum and maximum rates prescribed for residential or institutional users.

17. The legislature has thus enacted a classification that takes into account (i) The user of the land or building – industrial, commercial, residential or, as the case may be, institutional; (ii) The territorial location of the land with reference to the nature of the urban area within which it is situated; and (iii) The nature of the development activity that is proposed to be carried out. This classification is based on an intelligible differentia which has a nexus to the object sought to be achieved viz. the provision of a public amenity and the generation of funds for the Authority to provide the service. Industrial, commercial, residential and institutional users differ both in the nature or scale of operations and the demands that are placed on the civic infrastructure. The territorial location of an urban area is taken notice of by the legislature because it does determine the nature and scale of amenities provided and the commitment of resources required. The nature of the development activity is an intelligible basis of classification.

18. The reliance which is placed by the petitioners on the ready reckoner devised for the purposes of stamp duty is misplaced. The ready reckoner provides a guideline to registering authorities for the imposition of stamp duty which is dependant upon the market value of the property. Stamp duty on a document of conveyance is based upon the market value of the immovable property. The underlying basis for imposing a Development Charge is different viz. the commencement of use or of development activity. The yardstick in the two cases cannot be the same.

19. Counsel appearing on behalf of the petitioners sought to place reliance on the decision of the Supreme Court in *State of Kerala vs. Haji K. Haji K. Kutty Naha, AIR 1969 SC 378.* That was a case where under the Kerala Buildings Tax Act, 1961 the sole test for determining the quantum of tax was the floor area of the building. The Supreme Court held that there was no rational classification at all and in that context observed thus :

> "……*the Legislature has not taken into consideration in imposing tax the class to which a building belongs, the nature of construction, the purpose for which it is used, its situation, its capacity for profitable user and other relevant circumstances which have a bearing on matters of taxation.* They have adopted merely the floor area of the building as the basis of tax irrespective of all other considerations. Where objects, persons or transactions essentially dissimilar are treated by the imposition of a uniform tax, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality." (emphasis supplied).

20. On the other hand, it is evident from the legislation in the present case that the imposition of a Development Charge has taken into account the nature of the user of lands and buildings, the nature and location of the urban area within which the land or as the case may be the buildings, are situated and the nature of the development activity that is sought to be pursued. This classification is based on an intelligible differentia which has a rational nexus to the amenities which a Planning Authority or Development Authority provides within the area under its jurisdiction and which in turn generates a need for resources to fund and maintain the amenities. We, therefore, do not find any merit in the challenge on the ground of Article 14.

21. The next head of challenge that was urged before us was in regard to the provision which requires a deposit of the amount of assessment pending the disposal of the appeal. Section 124E provides for the assessment and recovery of a development charge. Under this provision a person who intends to carry out development or to institute or change any use of land or building for which permission is required under the Act has to apply to the authority for the assessment of a development charge payable in respect thereof. Under sub-section (2) of section 124E the authority has to carry out its assessment after serving a notice on the person liable to make such payment and upon calling for a report from the concerned officer of the authority. A reasonable opportunity of being heard is provided for before an assessment is made. The proviso to sub-section (2) of section 124E lays down that where permission under the Act has not been granted for carrying out the said development, it is open to the authority to postpone the assessment of the Development Charge. Section 124G provides an appeal to the State Government by a person aggrieved by an order passed by the Authority. Under section 124H (b) the appeal shall not be entertained unless the amount claimed in the notice of assessment from the appellant together with the interest, if any due thereon, has been deposited in the office of the authority. Section 124I has thereafter provided that if any amount is required to be refunded to the appellant, upon the decision of the appeal, the amount of refund shall carry interest at the rate of 18% per annum from the date on which the amount was paid until the date of refund. A similar provision for the payment of interest has been made on amounts which are liable to be recovered from the assessee. The provision for deposit pending appeal has to be understood in the background of these statutory provisions. An appeal is a creature of the statute. The assessment can be postponed by the Authority where permission for carrying out development has not been granted under proviso (a) to sub-section 124E. The requirement of deposit where permission to develop has been granted cannot be regarded as an arbitrary restriction on the right of the developer. A sufficient safeguard is available to the developer by requiring the authority to pay interest at the rate of 18% per annum in the event that any amount is held to be refundable to the developer upon the conclusion of the appeal. The provision for deposit cannot be regarded as rendering the right of appeal illusory.

22. We may briefly advert to two subsidiary contentions which were advanced, the first being in regard to the power of the Authority to enhance the Development Charges under section 124B(2) and the second in relation to the power to grant an exemption under section 124F. The enhancement of

Development Charges by the Authority is not left to the exercise of unfettered discretion. The legislature has prescribed the minimum and the maximum rates. Before an enhancement can be effected, the authority has to pass a resolution at a special meeting approving the regulations prescribing the rates of development charge. The previous sanction of the State Government to the regulation has to be taken. We have already noted earlier that the levy of a Development Charge under Chapter VI-A of the Act is in the nature of a fee. Section 124J requires that the collections should be expended only for providing public amenities in the area and for the maintenance and improvement of the area under the jurisdiction of the authority. The decision of the authority in a given case to enhance the rate within the maximum that is prescribed by the statute can always be questioned and in the event of a challenge would have to be justified inter alia with reference to commitments made or to be made by the authority for the development of amenities or for the maintenance and improvement of the area in its jurisdiction. The parameters which the law, as interpreted by the Supreme Court, requires to be observed for a valid imposition of a fee must be observed by all public authorities and an enhancement of the fee under Chapter VI-A is no exception. The power to enhance the rate of the Development Charge is therefore neither arbitrary nor in the realm of the unfettered discretion of the authority.

23. The power to grant an exemption under section 124F is in respect of the development of lands or buildings by educational institutions, medical institutions or charitable institutions. Here again, in an individual case the Court would consider a challenge to an exemption if made before it. The provision, however, cannot be struck down as unconstitutional. The power conferred upon the State Government to grant an exemption partially in the case of institutions falling in these categories is neither arbitrary nor invalid.

24. Having thus considered the matter from all its perspectives, we do not find any merit in the challenge to the constitutional validity of Chapter VI-A of the Maharashtra Regional and Town Planning Act, 1966 as amended. The Petition shall accordingly stand dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

Petition dismissed.

MAHARASHTRA AGRICULTURAL LANDS (CEILING ON HOLDINGS) ACT, SECTION 45(2)

(B. P. Dharmadhikari, J.)

RAMESH s/o BAPURAO UPLENCHWAR and another *Petitioners.*

vs.

STATE OF MAHARASHTRA and others *Respondents.*

Maharashtra Agricultural Lands (Ceiling on Holdings) Act (27 of 1961), S. 45(2) Proviso — *Appeal against order of the Sub-Divisional Officer declaring petitioner's land as surplus — In view of power prescribed under proviso to section 45(2) of Act, Commissioner had no jurisdiction to entertain suo motu revision — Notices issued by Commissioner for enquiry into holding of petitioner liable to be quashed — More so when application of mind by Commissioner was beyond period of three years.*

W. P. No. 1219 of 1993 decided on 29-3-2005. (Nagpur)