HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

Writ Petition No.6945 of 2016

Rameshwar Patel and others
Vs.
Indore Municipal Corporation and another

Shri R.S.Chhabra, Advocate for the petitioners.
Shri Aniket Naik, Advocate for the respondents

Whether approved for reporting YES/NO

Reserved on: 30/10/2018

ORDER
(15/11/2018)

Rohit Arya, J

Petitioners styling themselves as owners-in-possession of land bearing survey Nos.182/2 Min-2, 182/3, 182/4 Min-1 and 182/5; total admeasuring area 0.752 hectare situated in village Hukmakhedi, tahsil and district Indore have approached this Court under Article 226 of the Constitution of India, taking exception to the demand notice dated 08/09/2016 (Annexure P/6) whereunder amongst other demands under different heads, a sum of Rs.7,08,331/- has been raised under the head 'Narmada Capital Fund' by the Municipal Corporation Indore; Colony Cell Department (for short, 'the MCI') as pre-deposit to accord building permission for development and construction of a resort/club with the contention that the aforesaid demand is contrary to the order passed by a Division Bench of this Court reported in **2015(1) MPLJ 600; Confederation of Real Estate Developers Association of India (CREDAI) Vs. State of M.P., and another**.

In the alternative, it is contended that petitioners' representation against such demand is pending consideration, therefore, in terms of the order passed on 23/06/2014 in **W.P.No.3567/2014 (Jagran Social Welfare Society Vs. Indore Municipal Corporation and others**), petitioners may be allowed to deposit Rs.10/- per sq.ft., of the proposed construction area towards the said fund pending final decision and upon failure to

make good the difference amount on the due date, the same may be recovered even by coercive method.

2. The respondents/MCI denying the averments made in the writ petition submitted that they have imposed user charge in the form of water charges for providing services to the newly developed colonies or colonies which are being regularized for incurring additional capital expenditure making provision for water supply from the Narmada river. The one time charge so levied by the MCI under section 132A of the Madhya Pradesh Municipal Corporation Act, 1956 (for short, 'the Act') is within domain of the Corporation. Therefore, no interference is warranted in this writ petition.

3. During the course of hearing, learned counsel for the MCI also pointed out the objects and reasons for incorporating section 132A of the Act vide M.P.Act No.15 of 2010 (19/04/2010) and deletion of the corresponding provision under section 132(1)(b) by the same amending Act. The relevant part thereof reads as under:

> “2. The salient features of the proposed amendments are as under:
> (1) The Municipal Corporations and Municipalities provide a number of services to citizens for which the charges imposed are required to be determined <u>on the basis of expenditure incurred on operation and maintenance of such services. Hence, there is an urgent need to define and provide for such user charges separately.</u> Therefore, separate sections are being proposed in both the Acts for imposing user charges.
> …. … ...”

(Emphasis supplied)

4. The contention of the MCI is that imposition of user charges; a one time charge for making provision of water supply in respect of lands and buildings to which a water supply is furnished by Corporation, such service charge is for provision for supply water and the same is not to be understood as the 'actual consumption of water supply' as is well evident from the plain reading of section 132A(1)(a) of the Act. Such charges are

realized to recover the expenses incurred by the MCI while making provision for supply of water from Narmada river to different colonies under construction or regularized colonies. Such charges, therefore, cannot be styled as in anticipation of development of land.

To bolster his submission that the MCI has competence for making provision of water charges, learned counsel has relied upon two judgments of the Hon'ble Supreme Court reported in **(2012) 3 SCC 442 Bangalore Development Authority Vs. Aircraft Employees' Cooperative Society Limited and others and (2007) 11 SCC 324 Union of India and others Vs. State of Uttar Pradesh and others.**

5. Heard.

6. Before adverting to the rival contentions, it is expedient to say that under the scheme of the Act with special reference to the building permission, consequent upon sanction of the lay out by the Town and Country Planning Department, State of Madhya Pradesh; the infrastructure, public conveniences like drainage, street lights, provision for water supply, management of waste water supply, upkeep of hygienic conditions and elimination of health hazards, etc., various provisions have been made under the Act. Chapter XI deals with taxation and properties for various nature of taxes including 'imposition of user charges' under section 132A of the Act incorporated by amending Act No.15 of 2010 on 19/04/2010, the salient feature quoted above thereby the corresponding provision under section 132(1)(b) of the Act has been deleted by the same amending Act reads as under:

> "(b) a water tax, in respect of lands and buildings to which a water supply is furnished from or which are connected by means of pipes with municipal water works."

A careful reading of the aforesaid quoted provision suggests that earlier water tax in respect of lands and buildings was recoverable if either water supply is furnished from the municipal water works or such lands and buildings are connected by means of pipes with municipal water works. However, the amended provision under section 132A(1)(a) of the Act contemplates a water charge for provision of water supply in

respect of lands and buildings to which a water supply is furnished by Corporation. In other words, water charge is recoverable if there is a provision for water supply in respect of lands and buildings through which water supply is furnished. To appreciate this distinction, it shall be helpful to take aid of objects and reasons for substitution of the previous provision, i.e., section 132(1)(b) of the Act quoted above whereunder it is provided that number of services to citizens for which the charges imposed are required to be "determined on the basis of expenditure incurred on operation and maintenance of such services." As such, taxation event is existence of the provision for water supply and not in anticipation thereof. It is one time charge for providing such service and not any proposal for development of land. It is charged at the stage of grant of building permission after sanction of the lay out by the Town and Country Planning Department, State of Madhya Pradesh. Hence, it has direct nexus with the provision for supply of water to the proposed construction.

In the opinion of this Court, such charge cannot be said to be *ultra vires* the section 132A(1)(a) of the Act.

7. The right of the Municipal Corporation to levy water charges and sewerage charges on a building and land belonging to the Railways (Union of India) in the context of Article 285 of the Constitution of India, the Hon'ble Supreme Court in the case of **Union of India and others (supra)** concluding that such charges are not taxes on the property of the Union but, for rendering services of water supply and sewerage services rendered by it has held as under:

> "**23.** In this case what is being charged is for service rendered by the Jal Sansthan i.e. an instrumentality of the State under the Act of 1975. Section 52 of the Act states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services rendered by it as water tax and sewerage tax at the rates mentioned therein. Though the charge was loosely termed as "tax" but as already mentioned before, nomenclature is not important. In substance what is being charged is fee for the supply of water as well as maintenance of the sewerage system. Therefore, in our opinion, such service charges are a fee and cannot be said to be hit by Article 285 of the Constitution. In this context it is to be made clear that what is exempted by Article 285 is a tax on the property of the Union of India but not a charge for services which are

being rendered in the nature of water supply, for maintenance of sewerage system. Therefore, in our opinion, the view taken by the Division Bench of the Allahabad High Court is correct that the charge is a fee, being service charges for supply of water and maintenance of sewerage system, which cannot be said to be tax on the property of the Union. Hence it is not violative of the provisions of Article 285 of the Constitution."

8. In the case of **Bangalore Development Authority (supra),** the Hon'ble Supreme Court while addressing on manifold unprecedented increase in the population of the Bangalore city and the policy decision taken by the State Government to encourage housing societies to form private lay outs, it justified augmentation of revenue for channelization of resources for extension of civic amenities like water supply, electricity, roads, transportation, etc., negated the challenge made to enabling provision under section 32(5-A) of the Bangalore Development Authority Act, 1976 has held as under:

"53. While examining the issue of hostile discrimination in the context of Section 32(5A), the Court cannot be oblivious of the fact that due to unprecedented increase in the population of the Bangalore City and the policy decision taken by the State Government to encourage house building societies to form private layouts, the BDA was obliged to take effective measures to improve the civic amenities like water supply, electricity, roads, transportation, etc. within the Bangalore Metropolitan Area and for this it became necessary to augment the resources by the BDA itself or through other State agencies/instrumentalities by making suitable contribution. It would be a matter of sheer speculation whether in the absence of increase in the population of the Bangalore Metropolitan Area and problems relating to planned development, the legislature would have enacted the 1976 Act and the State and its agencies/instrumentalities would have spent substantial amount for augmenting water supply, electricity, transportation and other amenities.

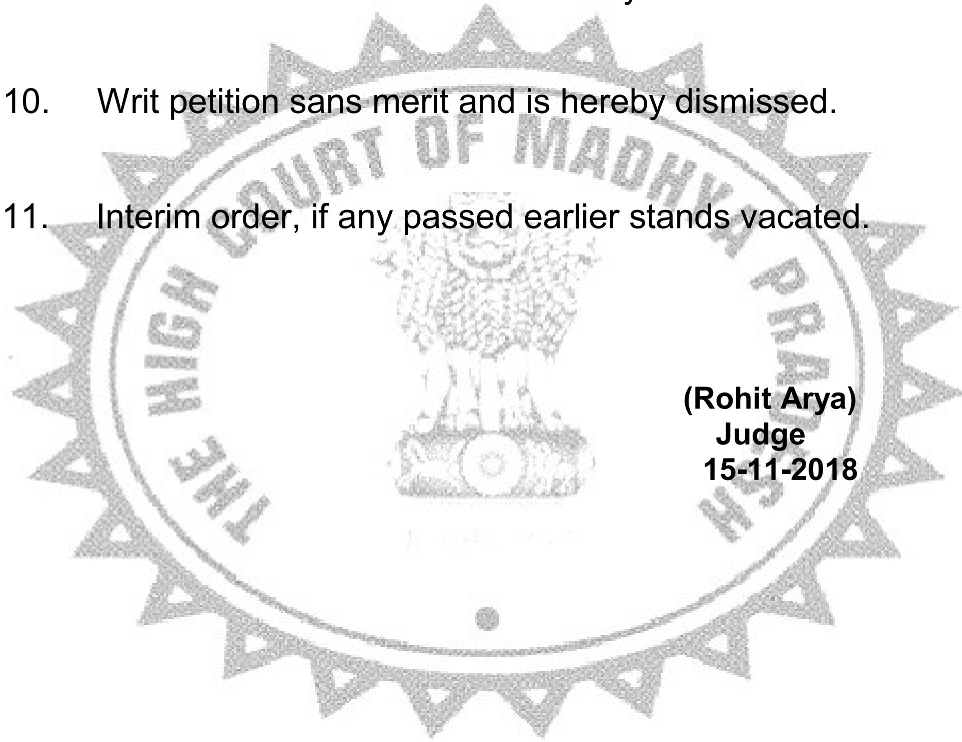
54. However, the fact of the matter is that with a view to cater to the new areas, and for making the concept of planned development a reality qua the layouts of the private House Building Societies and those involved in execution of large housing projects, etc., the BDA and other agencies/instrumentalities of the State incurred substantial expenditure for augmenting the water supply, electricity, etc. There could be no justification to transfer the burden of this expenditure on the residents of the areas which were already part of the city of Bangalore. In other words, other residents

> could not be called upon to share the burden of cost of the amenities largely meant for newly developed areas. Therefore, it is not possible to approve the view taken by the High Court that by restricting the scope of loading the burden of expenses to the allottees of the sites in the layouts developed after 1987, the legislature violated Article 14 of the Constitution."

9. The order of the Division Bench of this Court cited by the learned counsel for the petitioners in the case of **Confederation of Real Estate Developers Association of India (CREDAI) (supra)** itself suggests that each case has to be decided on its own merits and is of no assistance to the petitioners particularly in view of additional counter-affidavit filed by the MCI.

10. Writ petition sans merit and is hereby dismissed.

11. Interim order, if any passed earlier stands vacated.



(Rohit Arya)
Judge
15-11-2018

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