A AHMEDABAD URBAN DEVELOPMENT AUTHORITY

v.

SHARAD KUMAR JAYANTIKUMAR PASAWALLA & ORS.

MAY 15, 1992

B [M.M. PUNCHHI, S.MOHAN AND G.N. RAY, JJ.]

Gujarat Town Planning and Urban Development Act, 1976—Sections 119(1) and 119(2)(c)—Levy and recovery of development fee—Whether valid and authorised—Specific provision whether necessary.

C

Constitution of India, 1950—Articles 14, 19, 21—Constitutional validity of sections 119(1) and 119(2)(c) of the Gujarat Town Planning and Urban Development Act, 1976—Levy and recovery of development fee—Validity of.

The respondents filed a writ petition in the High Court challenging the
D **Constitutional validity of Sections 119(1) and 119(2)(c) of the Gujarat Town Planning and Urban Devopment Act, 1976 and the regulations made under the Act, contending that levy of devlopment fee was not authorised by the statute and therefore the action of respondent No.1 in collecting various amounts from the petitioners in the form of development fee was not authorised; that no development fee could be charged even by the State**
E **Government because there was no provision in any Entry in List II of Schedule 7 to the Constitution; that the levy of development fee was *ultra vires* as the same did not fall under Section 119 of the Town Planning Act and the regulations made by the Development Authority were unauthorised, illegal and voil; and that even if there was any power to levy such fee by the State**
F **Legislature in the absence of delegation of such power, the Development Authority could not impose any development fee.**

The High Court allowed the writ petition holding that as there was no express provision for imposition of fee and the State Government had not delegated any such power to the Development Authority to impose fees
G **for development, the regulations framed for such imposition of fees and the demands made therefore were wholly unauthorised and illegal.**

The appellant, the Development Authority, in its appeal by special leave, made against the High Courts's judgment, contended that for implementing various schemes of development, the development or better-
H **ment fee was required to be imposed and collected, such imposition of fee,**

therefore, must be held be incidental to the development activities; that in such state of affairs, even if, there was no specific provision for imposition of betterment or development fee, such power must be held to be implied under the Act; that the development authority could impose such fee and such power to impose fees was ancillary to the development activities and was implied in the Act; that if the State Legislature was competent to impose fees, the Development Authority by virtue of the delegated legislation also could impose betterment fee or the development fee and simply because imposition of such fee by the Development Authority was not specifically mentioned, it could not be held that the Development Authority could not impose any betterment fee or development fee even though such fee was essential for the development activities and had been imposed with reference to development effected; that the High Court was not justified in holding that such imposition of fee by framing regulations was wholly unauthorised and as such illegal and void.

Dismissing the appeal of the Urban Development Authority, this Court,

HELD: 1.01. In a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. Such power of imposition of tax and/or fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. [336 E]

1.02. The delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intend or the concept of incidental and ancillary power in the matter of exercise of fiscal power. [336 F]

1.03. Whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. [337 B]

The Hingir Rampur Coal Compnay Limited v. *State of Orissa,* AIR 1961 SC 459; *Sri Jagannath Ramanuj Das* v. *State of Orissa,* AIR 1954 SC 400; *Delhi Municipal Corporation* v. *Mohd. Yasin,* AIR 1983 SC 617 and *Lilawati* v. *State of Bombay,* AIR 1957 SC 521, referred to.

A *District Council of the Jowai Autonomous District, Jowai and others* **v.** *Dwet Singh Rymbai etc.,* **AIR 1986 SC 193;** *Khargam Panchayat Samiti and Anr.* **v.** *State of West Bengal and Ors.,* **[1987] 3 SCC 82, distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10111 of 1983.

B

From the Judgment and Order dated 22.8.1983 of the Gujarat High Court in Special Civil Application No. 3494 of 1980.

P.K. Goswami and P.H. Parekh for the Appellants.

C P.C. Kapur (NP) and M.N. Shroff (NP) for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. This appeal is directed against the judgment of the High Court of Gujarat dated August 22, 1983 in Special Civil Application D No.3494 of 1980. The said Special Civil Application No.3494 of 1980 arose out of a Writ Petition moved in the High Court of Gujarat by the respondents Nos.1,2,3 *inter alia* for declaration that the provisions of Sections 119(1) and 119(2)(c) of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as the Town Planning Act) are *ultra* E *vires* and the impugned regulations purported to have been made under the Town Planning Act are *ultra vires* Articles 14, 19 and 21 of the Constitution and the said regulations are also *ultra vires* the Town Planning Act itself. The Writ Petitioners also made a prayer before the High Court for appropriate writ, order or direction directing the Ahmedabad Urban Development Authority (hereinafter referred to as the Development F Authority) not to enforce or implement the said regulations and not to levy or recover any amount as development fee under the said regulations. A prayer was also made for appropriate writ, order or direction directing the Development Authority to refund the amount of development fees realised form the Writ Petitioners.

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It was contended by the Writ Petitioners that;

(a) levy of development fee is not authorised by the statute and therefore the action of respondent No.1 in collecting various amounts from the petitioners in the forms of development fee H was not authorised.

(b) No development fee could be charged even by the State Government because there is no provision in any Entry in the List II of Schedule 7 to the Constitution. A

(c) The levy of development fee is *ultra vires* as the same does not fall under Section 119 of the Town Planning Act and the impugned regulations made by the Development Authority are unauthorised, illegal and void. B

(d) Even if there is any power to levy such fee by the State Legislature in the absence of delegation of such power, the Development Authority could not impose any development fee. C

The High Court of Gujarat has held that Entry 66 of List II of VIIth Schedule to the Constitution deals with fees in respect of any of the matters in the said List but not including any fee taken in any Court. Entry 5 of List II of that Schedule refers to Constitution and powers of improvement trust and other local authorities for the purpose of local self government or village administration. The High Court has held that under Entry 66, the State Legislature has legislative competence to make provisions for fees to be imposed by the Development Authority constituted under Section 31 of the said Act. The High Court has, however, held that simply because there is legislative competence for the State Government to charge fees for the Urban Development Authority, it cannot be held that demands for the development fee and/or imposition of the same by the Development Authority under the impugned regulations is legal and valid. The High Court has indicated that it is to be seen whether under Town Planning Act, a specific power has been given to the Development Authority to impose such development fee. After scrutinising the provisions of the Town Planning Act, the High Court has come to the finding that the Development Authority or as a matter of fact any other authority under the Act has not been vested with the power to charge betterment or the development fee. D E F

The High Court has referred to the decisions of this Court in *The Hingir Rampur Coal Company Limited* v. *State of Orissa,* AIR 1961 SC 459 and *Sri Jagannath Ramanuj Das* v. *State of Orissa,* AIR 1954 SC 400. This Court has held that between a tax and a fee there is no generic difference because in a sense both are compulsory exactions of money by public authority but in a tax imposed for public purpose, no service need be rendered in return of such tax. A fee is however levied essentially for G H

A services rendered and as such there is an element of *quid pro quo* between the person paying the fee and the public authority imposing the same. It has been further indicated that whenever there is any compulsory exaction of any money from a citizen, there must be a specific provision for imposition of such tax and/or fee. There is no room for any intendment for
B imposition of compulsory payment. Whenever there is any compulsory exaction of money from a citizen, nothing is to be read and nothing is to be implied. One should look fairly at the language used. The High Court has also referred to another decision of the Court in the case of *Delhi Municipal Corporation* v. *Mohd. Yasin,* AIR 1983 SC 617 wherein the compulsory nature of exaction by way of tax and fee partaking the character
C of tax has been reiterated and it has been held that there is no generic difference between tax and fee though broadly a tax is compulsory exaction as part of a common burden without promise of any special advantages to classes of tax payers whereas a fee is a payment for services rendered or benefit provided or privilege conferred. The High Court has held that since
D there is no express provision for imposition of fee and the State Government has not delegated any such power to the Development Authority to impose fees for development, the regulations framed for such imposition of fees and the demands made therefore are wholly unauthorised and illegal.

E Mr. Goswami, learned Counsel for the appellant, has however, submitted that although in some cases, a fee is essentially a tax because of its compulsory nature of exaction, there is a defference between a tax and a fee if examined with reference to absence or presence of element of corresponding service rendered. He has however fairly conceded that when
F pursuant to the development scheme an area is developed under the provisions of the Act, such development of the area does not depend on the volition of the person concerned. Hence, when development fees are imposed for the development effected in the area in question, the persons coming under the scheme will have to make such payment irrespective of
G the fact whether or not such person had intended for such development. Even then, such fee is charged for the service rendered by the Development Authority. Mr. Goswami has further contended that the Development Authority, unlike other local authorities, like Municipalities or Panchayats has no power or authority to collect any tax even though it is essentially necessary to augment its revenue for the desired purpose of development
H of the area in question. Precisely for implementing various schemes of

development, the development or betterment fee is required to be imposed and collected. Such imposition of fee, therefore, must be held to be incidental to the development activities. In such state of affairs even if there is no specific provision for imposition of betterment or development fee, such power must be held to be implied under the Act. In this connection, Mr. Goswami has drawn our attention to Section 90 and Section 91 of the Town Planning Act. Section 90 provides that:

> "An appropriate authority may for the purpose of a development plan or for the making of execution of a town planning scheme borrow money and if the approriate authority is a local authority the money shall be borrowed in accordance with the provisions of the Act under which the local authority is constituted or if such Act does not contain any provision for such borrowing, in accordance with the Local Authorities Loans Act, 1914 or as the case may be, the Saurashtra Local Authorities Loans Act, 1951, and any expenses incurred by an appropriate authority or the State Government under this Act in connection with a development plan or a town planning scheme may be defreyed out of the funds of the appropriate authority".

Section 91 (1) and (2) have been referred to by Mr. Goswami, which are to the following effect:

> "91 (1) An appropriate authority shall have and maintain its own fund to which shall be credited-
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> (a) all moneys received by the authority by way of grants, loans, advances or otherwise;
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> (b) all moneys derived from its undertakings, projections and other sources;
>
> (c)such amounts of contributions from local authorities as the State Government may specify from time to time to be credited to the fund
>
> (2) the fund of an appropriate authority shall be applied towards meeting-
>
> (a) expenditure incurred in the administration of this Act;

A (b) cost of acquisition of land for the purpose of this Act;

(c) expenditure for any development of land in the development area;

B (d) expenditure for such other purposes as the State Government may direct.

* * * * * * * * * * * *"

C Mr. Goswami has submitted that clause (a) of sub-section (1) of Section 91 indicates that moneys received by the authorites may come by way of grants, loans, advances "or otherwise". He has, therefore, contended that apart from grants, loans and advances, the appropriate authority which is Development Authority in the instant case, can have funds which are not by way of grants, loans and advances but from a source different from that. D He has contended that the legal implication of the expression 'or otherwise' has been noted by this Court in the case of *Lilawati* v. *State of Bombay,* AIR 1957 SC 521. This Court in the said decision has indicated when and under what circumstances the principle of *ejusdem generis* is to be applied and has indicated that the legislature, when it uses the word 'or otherwise', E apparently intends to cover other cases which may not come within the meaning of provided clauses. Relying on the said decision, Mr. Goswami has contended that apart from the money received by the Development Authority by way of grants, loans and advances, the Development Authority can also create funds "otherwise" and the development fee is creation of such fund otherwise than by loans, grants, etc. Mr. Goswami has contended F that the funds so received by the development authority are required to applied under sub-section (2) of Section 91 for purposes mentioned therein including the expenditure for any development of the land in development area. He has, therefore, contended that the legislature has really intended that for the purpose of development, fund is required to be generated and G such fund may be generated not only by way of grants, loans or advances but also otherwise. The only limitation of generation of such funds is to apply such fund for the specific purposes referred to in sub-section (2) of Section 91. Mr. Goswami has contended that it is nobody's case that such development fee has not been utilised for the purpose of sub-section (2) H of Section 91. He has, therefore, contended that the development authority

can impose such fee and such power to impose fees is ancillary to the development activities and is implied in the Act. He has contended that if the State Legislature is competent to impose fees, the Development Authroity by virtue of the delegated legislation can also impose betterment fee or the development fee and simply because imposition of such fee by the Development Authority is not specifically mentioned, it cannot be held that the Development Authority cannot impose any betterment fee or development fee even though such fee was essential for the development activities and has been imposed with reference to development effected. Mr. Goswami has very strongly relied on the decision of this Court in the case of the *District Council of the Jowai Autonomous District Jowai and others* v. *Dwet Singh Rymbai etc.*, AIR 1986 SC 193. In considering the validity of the Notification issued by the District Council of District, Jowai under United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act. 1959, it has been held by this Court that in the real sense what in sought to be required under the Act is not royalty since the forest does not belong to the District Council. The amount claimed by way of royalty under the Notification is in reality compulsory exaction of money by public authority for public purpose enforeceable by law and in not a payment for service rendered. The Court has held that there is no specific reference to the power to levy and fee in respect of any matter mentioned in paragraph 3 in the 6th Schedule to the Constitution similar to the corresponding provision in Entries of List II of 7th Schedule. Considering the facts of the case, it has been held that the power to levy fees in respect of any of the matters mentioned in paragraph 3 should be necessarily implied but such fee should not be disproportionately very high, that is a tax in disguise. The Court has indicated that the said United Khasi and Jaintia Hills Autonomous District (Management and Control of Forests) Act 1959, was enacted for the purpose of making provisions regarding the management and the control of forests which are not reserved forests in the area within the jurisdiction of District Council in the exercise of the powers conferred by Entry 3(1)(d) of the 6th Schedule to the Constitution. It has been held that even if there is no express provision to levy fees, the District Council under paragraph 3 can levy fees. Mr. Goswami has contended that it will not be correct to conted that in no case imposition of fee can be made unless there is specific provision for such imposition. Such power of imposition may be implied if the provision

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A of the Act are considered in the proper perspective and if such imposition becomes essential for the activities for which the statutory bodies are created. In this connection, Mr. Goswami has referred to another decision of this Court made in the case of *Khargram Panchyat Samiti and Anr.* v. *State of West Bengal and Ors.*, [1987] 3 SCC 82. It has been held by this B Court that in a statute conferment of general statutory power also carries with it incidental and consequential powers. Relying on the said decision, Mr. Goswami has contended that as the development has been effected by the Development Authority and there was necessity for augmenting the revenue for such development work and as Section 91 has recognised a fund to be created otherwise than by way of grants, loans or advances and C as imposition of such fee is incidental and/or ancillary to carrying on the purposes for which the Development Authority has been constituted under the Town Planning Act, it should be held that such power of imposition of fee is implied. He has, therefore, contended that the High Court of Gujarat was not justified in holding that such imposition of fee by framing im- D pugned regulations was wholly unauthorised and as such illegal and void.

After giving our anxious consideration to the contentions raised by Mr. Goswami, it appears to us that in a fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. In our view, such power of imposition of tax and/or E fee by delegated authority must be very specific and there is no scope of implied authority for imposition of such tax or fee. It appears to us that the delegated authority must act strictly within the parameters of the authority delegated to it under Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancillary power F in the matter of exercise of fiscal power. The facts and circumstances in the case of District Council of Jowai are entirely different. The exercise of powers by the Autonomous Jantia Hills Districts are controlled by the constitutional provisions and in the special facts of the case, this Court has indicated that the realisation of just fee for the a specific purpose by the autonomous District was justified and such power was implied. The said G decision cannot be made applicable in the facts of this case or the same should not be held to have laid down any legal proposition that in matters of imposition of tax or fees, the question of necessary intendment may be looked into when there is no express provision for imposition of fee or tax. The other decision in *Khargram Panchayat Samiti's* case also deal with the

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exercise of incidental and consequential power in the field of administrative law and the same does not deal with the power of imposing tax and fee. A

The High Court has referred to the decisions of this Court in *Hingir's* case, and *Jagannath Ramanuj's* case and *Delhi Municipal Corporation's* case (supra). It has been consistently held by this Court that whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. We are, therefore, unable to accept the contention of Mr. Goswami. Accordingly, there is no occasion to interfere with the impugned decision of the High Court. The appeal, therefore, fails and is dismissed with no order as to costs. B C

V.P.R. Appeal dismissed.