

Shaukat Ali Vs. Allahabad Development Authority and anr.

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Court : Allahabad

Decided On : Jul-01-2003

Reported in : 2003(4)AWC2939; (2003)2UPLBEC1573

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : [Uttar Pradesh Urban Planning and Development Act, 1973](#) - Sections 2, 15(2A), 33 and 35 to 38; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 5; Uttar Pradesh Regulation of Building Operations Act, 1958 - Sections 2A and 5

Appeal No. : C.M.W.P. Nos. 47222 of 2002 and 23281 of 2001

Appellant : Shaukat Ali

Respondent : Allahabad Development Authority and anr.

Advocate for Def. : B.B. Paul and ;A.K. Mishra, Advs.

Advocate for Pet/Ap. : Sudhir Kumar and ;M.K. Khan, Advs.

Disposition : Writ petition allowed

Judgement :

M. Katju, J.

1. These two writ petitions are being disposed off by a common judgment.

2. Heard learned counsel for the parties.

3. These two writ petitions as well as several similar writ petitions listed today before us disclose how the local authorities in the State are demanding and realising illegal amounts from the citizens causing immense harassment and hardship to the common man.

4. What is happening in Allahabad and other cities of the State is that whenever a citizen wants to make a building on his own land he has to apply for sanction of a map under Section 15 of the U. P. Urban Planning and Development Act. 1973 (hereinafter referred to as the 'Act'), and whenever such application for sanction of a map is made the Allahabad Development Authority immediately sends a bill to the applicant demanding exorbitant amounts before sanction of the map. These bills have been challenged in these two writ petitions and in several other connected writ petitions and a perusal of the same shows that almost all these demands are illegal (as will be presently demonstrated). However, unless these amounts are paid the map is not sanctioned or released, causing great harassment to the applicant. Thus, the Allahabad Development Authority, as well as other Development Authorities in the State, which have been constituted under the Act have become agencies of harassment to the public instead of being agencies of service to the people.

5. In Writ Petition No. 47222 of 2002 the petitioner Shaukat Ali has challenged the impugned demand notice dated 23.10.2002, issued by the Allahabad Development Authority (hereinafter referred to as 'A.D.A.') copies of which are Annexures 7 and 8 to the writ petition.

6. A perusal of Annexure-7 to the writ petition shows that the A.D.A. has demanded from the petitioner the following amounts : permit fee, water fee stacking fee division fee, development charges, inspection fee, open area penalty, etc. The total amount comes to Rs. 1,03,281.

7. Approximately the same amount has also been demanded by the notice, copy of which is Annexure-8.

8. The facts in Writ Petition No. 47222 of 2002 are that the petitioner had acquired a portion of property No. 24/30 Thornhill Road, Allahabad, from the recorded owner vide sale deeds Annexures 1 to 4 to the writ petition. On 24.9.2002 and 23.10.2002 the petitioner had submitted two separate applications with maps of the constructions he wanted to make on this property. Copies of the receipts of deposit of permit fees are Annexures-5 and 6. In response to these applications, the A.D.A. has issued the impugned demand notices Annexures-7 and 8.

9. As regards the demand for permit fees it is stated in para 7 of the petition that the petitioner has already deposited the permit fee vide receipts Annexures-5 and 6 to the writ petition. Hence further demand of permit fee is clearly illegal.

10. It is stated in para 8 of the petition that the A.D.A. itself does not supply any water for construction of the building. Water supply is done by the Jal Sansthan. Hence the demand of water fee/charges by A.D.A. is also illegal.

11. As to the demand of stacking fee (malwa charge), it is alleged in para 9 of the petition that the A.D.A. has not rendered any assistance to the petitioner for raising the constructions. Hence the demand is illegal.

12. As regards the demand of division charge it is alleged in para 10 of the petition that this is without any statutory sanction and hence it is illegal.

13. Concerning the demand of development charges, petitioners assert in para 11 of the petition that the A.D.A. does not provide any assistance, much less development, and hence this demand is also illegal.

14. As regards inspection charges and open area penalty demanded by the A.D.A., the petitioners contended that the same have no sanction of law, and hence are illegal.

15. The A.D.A. has filed counter-affidavit and it is alleged in para 7 of the same that the demand raised by the impugned notices is just and proper. In para 11 it is stated that the demand of water charges is referable to Section 15 (2A) of the Act read with Section 2 (ee) of the said Act. As regards the demand of malwa charges the same is referable to Section 15 (2A) read with Section 2 (kk). As regards

division charges, inspection charges and open space charge it is alleged in para 13 that the same is referable to Sections 5 and 7 (2C) of the U. P. Regulation of Building Operations Act, 1958.

16. A supplementary-counter-affidavit has also been filed by the A.D.A. in Writ Petition No. 47222 of 2002 and in para 4 it is admitted that the A.D.A. does not supply water. However, it is alleged that the A.D.A. is entitled to collect water fee from the parties seeking sanction of the proposed construction building, and subsequently the same is transferred to the concerned local authority. In Annexure-S.A.-1 to the supplementary-counter-affidavit, the A.D.A. has given a list of the colonies allegedly constructed by the A.D.A.

17. In Writ Petition No. 23281 of 2001 has been filed against the impugned demand notices dated 28.5.2001 issued by the A.D.A. (Annexures-8 and 9 to the petition) by which demand has been made from the petitioners of various charges.

18. The petitioners in Writ Petition No. 23281 of 2001 purchased a portion of house No. 130A Civil Station, Allahabad, through registered sale deeds. The property was initially lease property but in 1995 it was converted into freehold property by the District Magistrate, Allahabad.

19. The petitioners applied for sanction of a plan to construct a residential house on the land but no such sanction was granted by the A.D.A. Subsequently the petitioners raised some construction over the land and also applied on 14.5.1999 for compounding the constructions under the scheme framed by the A.D.A. The petitioner No. 1 deposited Rs. 1,18,000 on 11.3.2001 and Rs. 16,000 on 12.5.1999 vide Annexures-1 and 2. The petitioner No. 2 deposited Rs. 50,000 on 24.3.2001 and Rs. 16,000 on 12.5.1999 vide Annexures-3 and 4. The petitioner No. 1 also deposited Rs. 6,038 towards water charges with Jal Sansthan, Allahabad, on 17.10.2002 while petitioner No. 2 deposited Rs. 4,704 and Rs. 1,175 with Jal Sansthan vide Annexures-6 and 7. In para 9 of the petition it is stated that the A.D.A. has issued two separate demand notices dated 28.5.2001 to the petitioners for an amount of Rs. 2,42,457 and Rs. 1,17,184 respectively vide Annexures 8 and 9.

20. A perusal of the demand notice shows that it has demanded Rs. 14,152 as water charges and Rs. 4,544 as malwa charges. A further amount of Rs. 16,929 has been demanded as sub-division charges while another amount of Rs. 96,189 has been demanded towards development charges and Rs. 84,645 has been demanded towards open space charges.

21. In para 12 of the petition it is stated that the demand made by the A.D.A. is wholly illegal. As regard the water charges, it is alleged in para 14 of the petition that the same was already deposited by the petitioners with the Jal Sansthan, Allahabad and hence no further demand can be raised. As regard malwa charges, the demand is illegal as no property of the Nagar Nigam or A.D.A. has been utilised by the petitioners for the purpose of storage. It is alleged in para 16 of the petition that although Section 302 (1) (b) of the U. P. Nagar Mahapalika Adhiniyam, 1959, permits charge of fee for the use of land or street vested in the Mahapalika (now Nagar Nigam) for the deposit of the building material, no demand can be made in this respect from the petitioners as they have not used any property or street of the Mahapalika for storing the building materials.

22. It is alleged in para 17 of the petition that the U. P. Urban Planning and Development Act, 1973, prescribes the matter in which permission for raising construction is to be granted by the development authority, and the charge or taxes which can be levied for this purpose. It is alleged that the Act does not provide for the levying of any development charges from a person who raises constructions, and hence the demand is illegal. Section 33 empowers the authority to provide amenities or carry out development at the cost of the owner only in the event of his default. Section 33 has been quoted in para 20 of the writ petition. In para 21 of the petition it is alleged that the A.D.A. has not provided any amenity nor has it carried out any development activity in respect of the plots over which the constructions have been raised by the petitioners, and all the development activities and the amenities have been provided by the petitioners themselves from their own resources. Hence the development charges are illegal. As regard the betterment charges under Section 35, the same can be imposed only if the value of the property has gone up due to the development scheme of the authority. It is alleged that no such development scheme has been initiated by the A.D.A. and as

such the demand is illegal. It is alleged in para 23 of the petition that the sub-division charge is not justified as no levy can be imposed by the A.D.A. under the Adhiniyam or Regulations. As regard the open space charges, a perusal of the demand notice would indicate that initially the word 'parking fee' was printed therein which has subsequently scored out and the same has been substituted as open space charges. It is alleged in para 25 of the petition that neither any park has been provided by the A.D.A. nor any space or any other ground has been provided to the petitioners or other residents and as such this charge is illegal. It is alleged in para 26 that the petitioners have already deposited a substantial amount with the A.D.A. towards compounding charges but no amount is payable as malwa charges, water charges and sub-division charges, development charges or open space charges.

23. A counter-affidavit has been filed by the A.D.A. and we have perused the same. In para 3 of the same it is stated that the Nazul Plot No. 130A Civil Station, Allahabad, originally belonged to one R.S. David and others and their representative who floated a residential colony thereon without submitting a layout plan before the competent authority under the U. P. Urban Planning and Development Act, 1973 and the Rules and Regulations framed thereunder. This residential colony did not contain any external and internal development. It also lacked roads, water supply, drainage and sewerage system etc. The petitioners raised their constructions without taking sanction and also applied for compounding. The respondents have relied on the decision of the Supreme Court in State of U. P. v. Smt. Malti Kaul, 1997 (1) UPLBEC 99. In para 20 of the counter-affidavit it is stated that the water charges can be levied by the development authority under the Act. It is stated that charging of malwa fee/stacking fee by the development authority are referable to the Sections 35 to 38 of the Act, and have rightly been demanded. Sub-division charges and open space charges are also permitted under the Act and the Regulations.

24. We have also perused the rejoinder-affidavit, and have carefully considered the submission of the learned counsel for the parties.

25. We may deal with the various demands made by the impugned notices seriatim. These demands are :

- (i) Water charges,
- (ii) Malwa charges,
- (iii) Sub-division charges,
- (iv) Development charges, and
- (v) Open space charges.

26. As regard the water charges it may be mentioned that Clause (ee) of Section 2 of the Act as amended by U. P. Act No. 3 of 1997 defines water fees as follows :

"Water fees' means the fees levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of building.'

Section 15 (2A) after its amendment by U. P. Act No. 3 of 1997 states :

'The Authority shall be entitled to levy development fees, mutation charges, stacking fees and water fees in such manner and at such rates as may be prescribed.'

27. Water charges are claimed by the A.D.A. in accordance with the aforesaid provisions. The rate calculated is (a) 2% of the construction cost of ground floor, and (b) 1% of the construction cost of first floor and above. In this connection G.O. dated 15.5.1988, has been filed by the A.D.A. as Annexure-2 to the supplementary-counter-affidavit in Writ Petition No. 23244 of 2001, Smt. Rekha Bhargawa v. A.D.A. and Ors.

28. Clause (ee) of Section 2 of the Act was inserted by U. P. Act No. 3 of 1997 which came into effect from 1.5.1997. There was no mention of water fee earlier in the Act. The demand of water fee/charges pertaining to any period before 1.5.1997 is obviously illegal because Clause (ee) has not been inserted

retrospectively. The question, however, remains about the prospective operation of Clause (ee).

29. Clause (ee) defines 'water fee' to mean 'fee levied under Section 15 upon a person or body for using water supplied by the Authority for building operation or construction of building.'

30. It may be seen from the above definition that water fee can only be charged if water is supplied by the A.D.A. It has been admitted in para 4 of the supplementary-affidavit of the A.D.A. in Writ Petition No. 47222 of 2002 that the A.D.A. does not supply water to any one. In fact it is common knowledge that in Allahabad, as in other cities in U.P. water is supplied by the Jal Sansthan constituted under the U. P. Water Supply and Sewerage Act, 1975. The A.D.A. has no water works of its own. We can take judicial cognizance of these facts. Hence the demand of water charges is clearly unauthorised and illegal, because Section 2 (ee) states that water fee can be charged when the water is supplied by the Authority and not by some other authority. Moreover, no proof has been furnished by the A.D.A. that it passes on the water fee collected by it to the Jal Sansthan. Also, the petitioners have alleged in the writ petition that they have paid water charges to the Jal Sansthan, and this is not denied.

31. We now come to the second demand, namely, of malwa charges. The petitioners in Writ Petition No. 23281 of 2001 in para 14 have alleged that no property or street of the Nagar Nigam or A.D.A. has been utilised by the petitioners for the purposes of storing the building material and hence, the demand is illegal.

32. Stacking fee is claimed by the A.D.A. under Section 2 (kk) read with Section 15 (2A) of the Act as amended by U.P. Act No. 3 of 1997. The rate calculated is Rs. 11 per square meter of the proposed construction plan vide G.O. dated 5.2.1998 which is Annexure-4 to the supplementary -counter-affidavit filed in Writ Petition No. 23244 of 2001.

33. Sub-section (kk) of Section 2 as inserted by U.P. Act No. 3 of 1997 states :

'(kk) 'stacking fees' means the fees levied under Section 15 upon the person or body who keeps building materials on the land of the Authority or on a public street or public place.'

34. The above definition clearly mentions that the stacking fee can only be charged for keeping material on the land of the Authority or public place or street, and it cannot be charged for keeping building material elsewhere (e.g., on one's own land).

35. It is alleged in para 14 of the Writ Petition No. 23281 of 2001 that no property of the Nagar Nigam or A.D.A. has been utilised by the petitioners for stacking the building material. In para 16 it is alleged that no property or street of the Mahapalika now (Nagar Nigam) has been utilised by the petitioners for the purposes of storing the building material.

36. The reply to paras 14 and 16 of the writ petition is contained in paras 21 and 22 of the counter-affidavit of the A.D.A. Para 21 of the counter-affidavit merely states :

'That contents of paragraph 14 of the writ petition as stated are not correct and denied. It is added that charging of malwa fee/stacking fee by the Development Authority is specifically permitted under U.P. Act No. 3 of 1997 amending U. P. Urban Planning and Development Act, 1973.'

Paragraph 22 of the counter-affidavit states :

'That contents of paragraphNos. 15, 16 and 17 of the writpetition as stated are not correctand denied and in reply it isreiterated that demand noticedated 28.5.2001 issued byrespondent development authorityto the petitioners is just andproper and the same is wellfounded on law and facts involvedin the case.'

37. A perusal of both the paras 21 and 22 of the counter-affidavit shows that the allegations of the petitioners in Writ Petition No. 23281 of 2001 that they are not stacking their building material on the land of the authority or public street have not been specifically denied by the respondents. It is a well-settled law of pleadings that a specific averment must be given a specific reply, otherwise it will be deemed

to be admitted. When the petitioners have specifically denied that they stacked their materials on the land of the authority or public place, then it was incumbent on the A.D.A., if it wanted to levy stacking fee, to have clearly mentioned where exactly did the petitioners stack their materials, but that has not been done. Hence the allegations in paras 14 and 16 of the writ petition have to be treated as un rebutted and the demand of stacking fee is thus wholly illegal. Reference by the respondents to Sections 35 to 38 of the Act are wholly misconceived, as these provisions deal with betterment charges which, as a bare perusal of Section 35 indicates, can only be levied if any development scheme has been executed by the authority in the area in question due to which the value of the property has increased or will increase. No such development scheme has been executed in the area in question, as stated in paragraph 21 of the Writ Petition No. 23281 of 2001 and paragraph 11 of the Writ Petition No. 47222 of 2002.

38. We now come to the third demand, i.e., of sub-division charges. It is alleged in para 23 of Writ Petition No. 23281 of 2001 that a demand of Rs. 16,929 from petitioner No. 1 and Rs. 7,837 from petitioner No. 2 towards sub-division charges is not justified as no such levy can be imposed by the development authority under the provisions of the Act or Regulations framed thereunder. It is also alleged that the Development Authority can only realise fee or taxes as provided for under the Act and no levy can be made which is not contemplated by the Act.

39. The reply to paras 23 and 24 of Writ Petition No. 23281 of 2001 is contained in para 26 of the counter-affidavit of the A.D.A. It is stated therein that the sub-division charge and open space charge are permissible under the Act and the Rules and Regulations framed thereunder. However, in the counter-affidavit no specific mention of any particular provision of the Act or Rules or Regulations has been made. In our opinion, the A.D.A. can only levy such taxes, fees or charge as are contemplated by the Act. We have not been shown any provision of the Act, which permits the levy of sub-division charges or open space charges. Even in the amendment to the Act by U. P. Act No. 3 of 1997 there is no mention of open space charges or sub-division charges.

40. It may be mentioned that Section 15 (2A) of the Act refers only to development fees, mutation charges, stacking fee and water charges. There is no mention of open space charges or sub-division charges in Section 15 of the Act. No doubt para 4 of the supplementary-counter-affidavit mentions that sub-division charge is referable to certain G.Os., but in our opinion, a G.O. is not a statutory provision. Hence, the charge is illegal.

41. As regards Section 33 of the Act, in our opinion, this provision does not permit the A.D.A. to levy subdivision charges or open space charges, as a bare perusal of the provision indicates. Moreover it has been categorically asserted in para 21 of Writ Petition No. 23281 of 2001 that the A.D.A. has not provided any amenity nor has it carried out any development activity in respect of the plots over which constructions have been raised by the petitioners, and all the development activities and amenities have been provided by the petitioners themselves from their own resources. This allegation in para 21 of the petition has been replied to in paragraph 25 of the counter-affidavit. Paragraph 25 of the counter-affidavit states :

'That contents of paragraph No. 21 of the writ petition are denied. It is reiterated that demand of development charge is specifically allowed under U. P. Act No. 3 of 1997.'

42. It is well-settled that a bald denial to a pleading will tantamount to an admission vide *Badat and Co. v. East India Trading Co.*, AIR 1964 SC 538 (Para 11). A specific plea has to be given a specific reply, and a mere bald denial is not sufficient. This is clearly provided for in Order VIII Rule 5, C.P.C., and even though the C.P.C. is not in terms applicable to writ jurisdiction, many of its general principles apply. In our opinion, the principle of Order VIII Rule 5, C.P.C. applies to writ petitions also. Hence, we are of the opinion that the averments of the petitioners in para 21 of the Writ Petition No. 23281 of 2001 that the A.D.A. has not provided any amenity nor carried out any development activity in respect of the plots in question, and all amenities and development have been provided and done by the petitioners themselves through their own resources, is correct.

43. We now come to the fourth demand of the A.D.A. i.e., of development charges. We have already mentioned that in para 21 of Writ Petition No. 23281 of 2001 and

in para 11 of Writ Petition No. 47222 of 2002 the petitioners have stated that the A.D.A. has not done any development work in respect of the plots in question nor provided any amenity and this allegation has not been specifically denied by the A.D.A. in its counter-affidavit.

44. Learned counsel for the A.D.A. has, however, relied on the decision of the Supreme Court in *State of U. P. v. Smt. Malti Kaul*, 1996 (10) SCC 425.

We have carefully perused the above decision.

45. It may be mentioned that this Court in *Smt. Malti Kaul v. A.D.A.*, AIR 1995 All 397, had held that there is no statutory provision for realising development charges. This Court had relied on the decision of the Supreme Court in *A.D.A. v. Sharad Kumar*, AIR 1992 SC 2038, in which it was held that without an express statutory provision no authority cannot impose a tax or fee. This Court also referred to the decisions in *Hingir Rampur Coal Co. v. State of Orissa*, AIR 1961 SC 459 ; *Jagannath Ramanuj Das v. State of Orissa*, AIR 1954 SC 400 and *Delhi Municipal Corporation v. Mohd. Yasin*, AIR 1983 SC 617, in which it was consistently held by the Supreme Court that there should be a specific statutory provision empowering the authority to impose a levy, otherwise the imposition will be illegal. The A.D.A. had urged before this Court in *Malti Kaul's* case that development fee can be levied on the basis of the G.O. dated 12.8.1986, but this Court negated this contention holding that there must be a statutory provision for imposing of the development fee/charge and since there was none, the said charge/fee is illegal.

46. Against the decision of this Court in *Smt. Malti Kaul's* case (*supra*), the State Government filed an appeal before the Supreme Court which was allowed vide *State of U. P. v. Smt. Malti Kaul*, 1996 (10) SCC 425. We have carefully examined the decision of the Supreme Court in *Smt. Malti Kaul's* case. In para 8 of the said decision it has been observed that Section 33 of the Act give the power to the development authority to provide amenities or carry out development at the cost of the owner in the event of his default and to levy cess in certain cases. Under Sub-section (1) of Section 33 if the authority is satisfied after conducting an enquiry that any amenity in relation to any land in the development area has not been provided

in relation to that land, which in the opinion of the authority, ought to have been provided, then after giving opportunity of hearing to the owner it may impose the development charges. Sub-section (2) of Section 33 contemplates that if any amenity is not provided and development not carried out within the time specified the authority may itself provide the amenity or carry out the development itself or through some agency as it deems fit, and all expenses incurred in this work can be recovered from the owner in the manner indicated in Sub-section (4).

47. Thus, the Supreme Court has held that the power to impose development charge/fee is contained in Section 33 of the Act.

48. Section 33 of the said Act states :

'(1) If the authority after holding a local inquiry or upon report from any of its officers or other information in its possession, is satisfied that any amenity in relation to any land in the development area has not been provided in relation to that land which, in the opinion of the Authority ought to have been or ought to be provided or that any development of the land for which permission, approval or sanction had been obtained under this Act or under any law in force before the coming into force of this Act has not been carried out, it may after affording the owner of the land or the person providing or responsible for providing the amenity a reasonable opportunity to show cause, by order require him to provide the amenity or carry out the development within such time as may be specified in the order.

(2) If any amenity is not provided or any such development is not carried out within the time specified in the order, then the Authority may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit :

Provided that before taking any action under this sub-section, the Authority shall afford a reasonable opportunity to the owner of the land or to the person providing or responsible for providing the amenity to show cause as to why such action should not be taken.(3) All expenses incurred by the Authority or the agency employed by it in providing the amenity or carrying out the development together

with interest at such rate as the State Government may by order fix from the date when a demand for the expenses is made until payment may be recovered by the Authority from the owner or the person providing or responsible for providing the amenity as arrears of land revenue, and no suit shall lie in the civil court for recovery of such expenses.'

49. We have carefully perused the said section, which indicates that development charges under Section 33 can only be realised if, and only if, the authority does some development work or some amenity is provided by it. Also, a perusal of Section 33 indicates that the procedure mentioned in that provision has to be strictly followed before development charge can be levied. According to that procedure, first the Development Authority has to be satisfied (after an enquiry or a report or information) that some development has not been done or amenity not provided by the owner. The Authority must then, after giving the owner opportunity of hearing, order him to do so. If after such order the owner does not comply with it then the Authority, after giving the owner another opportunity of hearing, may itself develop the land or provide the amenity, and realize the cost from the owner.

50. Thus, an elaborate procedure has been laid down in Section 33 which must be complied with before development charges can be realized. This procedure has been given a complete go-by by the A.D.A., and instead the invariable practice adopted by it is that whenever an application is filed for sanction of a map (under Section 15) a demand for development charges (and also other charges) is immediately issued. This is clearly in violation of Section 33.

51. In para 21 of Writ Petition No. 23281 of 2001 it has been stated by the petitioner :

'That the petitioners categorically assert that the development authority has not provided any amenity nor it has carried out any development activity in respect of the plots over which the constructions have been raised by the petitioners, and all the development activities and the amenities have been provided by the petitioners, themselves from their own resources. Thus, the Development Authority has not incurred any expenses towards the aforesaid head and in view of which the demand made towards development charges is clearly unjustified in

law'.

The reply to paragraph 21 of the writ petition is contained in para 25 of the counter-affidavit which states :

'That contents of paragraph No. 21 of the writ petition are denied. It is reiterated that demand of development charge is specifically allowed under U. P. Act No. 3 of 1997.'

52. A perusal of para 25 of the counter-affidavit shows that there is no specific denial of the factual allegations of the petitioners in para 21 of Writ Petition No. 23281 of 2001 that no development authority has been done by the A.D.A. nor any amenity has been provided to the petitioners by the A.D.A. It is well-settled that a bald denial will amount to an admission. The averment in para 21 of the Writ Petition No. 23281 of 2001 should have been specifically replied to by the A.D.A. in its counter-affidavit. The petitioner has categorically alleged in para 21 of the writ petition that no development work has been done by the A.D.A. on the land in question nor has any amenity been provided to the petitioners. It was incumbent on the respondents if it wished to deny the said allegations to have specifically mentioned what development activity has been done by the A.D.A. and what amenity has been provided by it to the petitioners in respect of the petitioners' land, but that has not been done. In the absence of any specific pleadings in the counter-affidavit we have to accept the allegation in para 21 of the Writ Petition No. 23281 of 2001 and in para 11 of Writ Petition No. 47222 of 2002 that no development activity in respect of the plots in question was done by the A.D.A. nor any amenity provided by it. The houses in question are situated at Thornhill Road, Allahabad which is a road built during British times (as is well-known) and it is maintained by the P.W.D. The A.D.A. has neither built the Thornhill Road nor maintains it. In fact it was not even in existence when Thornhill Road was built. No doubt the A.D.A. has power under Section 33 to impose development charges if it does some development work, but in the case of the petitioners no such development activity has been done by the A.D.A. nor amenity provided by it to the petitioners, and the procedure prescribed in Section 33 was clearly not followed. In fact all the development work in the area was done by the concerned

authorities in Allahabad in British days, as is of common knowledge. We can take judicial cognizance of this fact.

53. The land on which the buildings in question were built was not developed by the A.D.A. but by some other agency or authority (probably the P.W.D.). Hence, in our opinion, no development fee/charge can be levied in this connection.

54. However, there are some colonies in Allahabad which have been built by the A.D.A. whose list is given in Annexure-SCA to the supplementary-counter-affidavit in Writ Petition No. 47222 of 2002. The A.D.A. can charge development charges in respect of these colonies which it developed (though even here the levy of development charge/fee must have some co-relation to the expenses incurred by the A.D.A. for the development work it has done, and it should not be arbitrary or exorbitant). It can also levy development charge in respect of other land in relation to which it has done some development work. However, even in such cases it must comply with the procedure laid down in Section 33.

55. We are, therefore, of the opinion that A.D.A. can levy development fee/charge only where some development work has been done by the A.D.A. in relation to the land in question, and there too, the charge must have some co-relation with the expenses incurred by the A.D.A. in this connection, and the procedure of Section 33 must be followed.

56. There are certain colonies in Allahabad which have been developed by bodies other than the A.D.A. e.g., the Awas Evam Vikas Parishad constituted under the U. P. Awas Evam Vikas Parishad Act, which is a statutory body. One fails to understand how the A.D.A. can charge development charges from the owners of the building in such colonies which were not developed by the A.D.A. and no amenity has been provided to them by it. Hence we make it clear that only where some development work was done by the A.D.A. can it charge development charges, and there too the levy should have some co-relation to the expenses incurred in the development work, and the procedure laid down in Section 33 must be followed,

57. In Smt. Malti Kaul's case (supra), the Supreme Court has referred (in para 10 of the judgment) to Section 59 (1) (c) of the Act which states that any directions or regulations made under the U. P. (Regulation of Building Operations) Act, 1958, in force on the date immediately before the date of commencement of the Act, shall in so far as they are not inconsistent with the provisions of this Act, continue in force until altered, repealed or amended by any competent authority under the Act.

58. The Supreme Court in Smt. Malti Kaul's case (supra), has referred to Clause 8 (vii) of the U. P. (Regulations of Building Operation) Directions, 1960, which states :

'(vii) The applicant has entered into an agreement with the local body concerned for the land and for provision of other amenities and has either deposited the full estimated cost of the development and provision of other amenities with that local body in advance or has given to it a bank guarantee equivalent to such cost ; or has entered into an agreement with that local body, providing that the full cost thereof may be realised by it out of the sale-proceeds of the plots that may be sold by the applicant :Provided that any such agreement between the applicant and the local body may provide for any part of the development and provision of other amenities being carried out by the applicant himself, however that in respect of any such part he shall give adequate security to the local body to secure that he shall carry out such part of the development and provide other amenities in accordance with the approved standards and specifications to the satisfaction of the Controlling Authority.'

59. A careful perusal of Clause (vii) shows that this clause is applicable where the applicant has entered into an agreement with the local body concerned for development of the land and for provisions of other amenities. Hence obviously it has no-application where there is no such agreement between the applicant and the local body for the development of the land and for the provision of other amenities. It is not alleged by the respondents in this case that there was any such agreement between the petitioners and the local body concerned for development of the land and for provision of amenities.

60. In para 21 of the Writ Petition No. 23281 of 2001 it has been categorically asserted that the development authority has not provided any amenity nor has it carried out any development activities in respect of the plots over which the constructions have been raised by the petitioners, and the development activities and amenities have been provided by the petitioners themselves from their own resources.

61. We, therefore, clarify that Clause (vii) of the said directions will only apply where there is an agreement between the applicant and the local body for the development of the land and for providing of other amenities.

62. Moreover, the use of the words 'providing that the full cost thereof may be realised by it out of the sale-proceeds of the plots that may be sold by the applicant' which occurs in Clause (vii) seems to indicate that this clause really relates to cases of development by a colonizer who develops the land and does plotting on the same and then sells the plots.

63. It may be mentioned that Sub-section (2A) of Section 15 which has been inserted by U. P. Act No. 3 of 1997 permits the authority to levy development fee. Development fee has been defined in Section 2 (ggg) which has also been inserted by U. P. Act No. 3 of 1997, as follows :

"Development fee' means the fee levied upon a person or body under Section 15 for construction of road, drain, sewer line, electric supply and water-supply lines in the development area by the Development Authority.'

The word 'development' has been defined in Section 2(e) of the Act as follows :

'development with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material charge in any building or land, and includes redevelopment.'

64. A careful perusal of the definition of 'development fee' shows that it can be levied upon a person or body for construction of road, drain, sewer line, electric supply and water supply by the development authority. Thus, the A.D.A. cannot charge development charge or fee when it has not done any development work,

and when the road is constructed by the P.W.D., drain and sewer are established by the Municipality (now known as Nagar-Nigam), water supply arranged by the Jal Sansthan and electric supply given by the U. P. State Power Corporation.

65. What has been happening in Allahabad (and other cities in U.P.) is that the A.D.A. or other Development Authority invariably demands development charge or other charges in advance whenever any building is sought to be constructed in the city, and an application is made for sanction of the map for this purpose, even though the A.D.A. may not have done any development work in this connection. This is clearly unauthorised and illegal, being directly in contravention of the language and the scheme of the statute. This will be apparent from a simple analysis of the provisions of Section 33 of the Act which clearly envisages that the development charge is recoverable only as, and by way of, recompense for any development work actually undertaken by the development authorities upon the default of the owner to carry out his obligations in regard to the proposed construction. What was supposed to be recompensed cannot be converted into means of augmenting the revenues of the A.D.A. which is what the A.D.A. has been actually doing.

66. As regards the Supreme Court decision in Smt. Malti Kaul's case (*supra*), a careful perusal of the same shows that all that the Supreme Court has held therein is that there are statutory provisions for levying development charge. The Supreme Court overruled the decision of this Court in Smt. Malti Kaul's case which had held that there is no statutory provision for levying development charge.

However, it is well-settled that existence of power is one thing, and exercise of that power is another. For instance, in the Cr. P.C. there is power in the police to arrest, but as held by the Supreme Court in *Joginder Kumar v. State of U. P.*, AIR 1994 SC 1349, (*vide para 24*) this does not mean that the police can arrest in every case.

67. Similarly, in *In the matter of 'K'. A Judicial Officer*, 2001 (3) SCC 54, the Supreme Court observed that the superior courts undeniably have power to pass strictures on a subordinate judiciary officer, but this power is to be exercised only when necessary for the purpose of reaching a decision.

68. In *Consumer Action Group v. State of Tamilnadu*, 2000 (7) SCC 425, the Supreme Court held that even though wide power may be conferred by the Statute, the power must be exercised reasonably and for the public good.

69. In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597, a seven Judge Constitution Bench of the Supreme Court held that arbitrariness violates Article 14 of the Constitution. It follows that even if the A.D.A. has statutory power to levy development fees/charges this power cannot be exercised arbitrarily.

70. Hence, merely because there are statutory provisions enabling the A.D.A. to levy development charge, this does not mean that the A.D.A. can levy development charge as of course and in every case, irrespective of whether it has done development work or not. In our opinion, the A.D.A. can levy development fee/charge only when it has done development work in relation to the land in question, and that too after strictly complying with the procedure laid down in Section 33, and the charge/fee must have some co-relation with the expenses incurred in this connection by the A.D.A.

71. In the present cases, we find that the demand is not preceded by any development work which might have been done by the A.D.A. in relation to the land in question.

72. In view of the above discussion, we are of the opinion that the impugned demands levied by the A.D.A. are ex facie unauthorised and illegal and are hereby quashed.

73. The last demand which has been challenged is the demand for open space charges and sub-division charges. We have not been shown any provision in the Act which empowers the A.D.A. to levy the open space charge or sub-division charge. In para 25 of the petition it is alleged that neither any park has been provided by the A.D.A. nor any open space has been provided to the petitioners. It has not even been alleged by the respondents that a park has been provided in the vicinity of the land in question. In para 27 of the counter-affidavit the reply to para 25 of the writ petition is as follows :

'That contents of paragraph Nos. 23, 24 and 25 of the writ petition as stated are not correct and denied. It is submitted that sub-division charges and open space charges are also permitted under U. P. Urban Planning and Development Act, 1973, Rules and Regulations of the respondent Development Authority framed hereunder. Rest of the averments and the averments to the contrary are incorrect and denied. True facts have already been stated.

Further reply if necessary shall be given subsequently.'

74. A perusal of para 27 of the counter-affidavit indicates that the factual allegation in para 25 of the writ petition has not been denied by the respondents and they have only stated that they have power to levy subdivision charge and open space charge. They have not denied that no park or open space has been provided to the petitioners or in their vicinity. Hence, in our opinion, the demand of park fee, sub-division fee or open space charge is clearly illegal. Moreover, these charges are not relatable to any statutory provisions under the Act. A G.O. is not a statute and hence, it cannot justify such a levy. A bare perusal of Section 5 and Section (2A) of the U. P. Regulation of Building Operations Act, 1938, on which the respondents rely, shows that these provisions do not authorise the concerned authority to impose the aforesaid charges.

75. It is well-settled that no tax or fee can be levied or realised without a statutory provision, vide Ahmedabad Urban Development Authority v. Sharad Kumar, AIR 1992 SC 2038 (para 6). Since there is no statutory provision for imposing park fee, open space charge, sub-division charge, inspection fee or permit fee, obviously the demands for the same are illegal, and they are quashed. Moreover, the petitioner in Writ Petition No. 47222 of 2002 has already paid permit fee as stated in para 4 of this writ petition, and we fail to understand how it can be demanded again.

76. In view of the above discussion, the writ petitions are allowed. The impugned demand notices in both these petitions are quashed. If any amounts mentioned in the impugned notices have been realised from the petitioners, they shall be refunded to them forthwith. If the refund is not made by the A.D.A. within one month from the date of this judgment, then it will have to pay interest at 12% per

annum from the date of realisation to the date of refund to the petitioners.

77. Before parting with these cases, we are constrained to observe that an alarming state of affairs has been prevailing in this State regarding the manner in which the local bodies in general and the development authorities in particular operate, so much so that the Court can take judicial cognizance of this fact. Instead of serving as instruments of looking after the welfare of the citizens, those in charge of operating such authorities have made them a tool of extracting money illegally from citizens, by fair means or foul. We have just seen how a provision which was designed only to enable the development authority to recompense itself for any expense which it might have incurred on the fault of the private individual has been used, or rather misused, and huge demands utterly illegally have been made against the common people, for whose welfare these authorities were supposed to function. We can take judicial notice of these facts. We are reminded of the observation made by the celebrated Justice Brandeis of the U.S. Supreme Court, who remarked 'A Judge is surely expected to know what everyone in society knows' (see *The Legacy of Holmes and Brandeis* by Samuel Konefsky).

78. It is well known that in U. P, and perhaps in many other States, whenever a person applies for sanction of a map for constructing a building or room, the authorities demand bribe, otherwise the map will not be sanctioned and all kinds of hyper-technical objections are raised. It is common knowledge that almost every Municipality or local authority in the country has fixed a rate of this bribe for sanctioning a map. One has to pay a hefty sum of money to the Municipality or Development Authority Officials if one wishes to get a map sanctioned for constructing a building or room, and if one does not pay this amount, the map will not be sanctioned come what may. How long the citizens of this country will tolerate this scandalous state of affairs is anyone's guess. The time has now come when it has become the duty of the Court to intervene in this disgraceful state of affairs and voice its protest. The judiciary has to speak out on behalf of the people in such matters and bring them out to the notice of the people at the helm of the affairs.

79. We are also informed that more often than not when a person applies under Section 15 of the Act for sanction of a plan unless he gives some extraneous consideration to the concerned officials, the application is kept pending for a long time giving rise to unnecessary hardship to the applicant. This is highly objectionable. The application should, in our opinion, be decided not later than three months of applying for the same and it should be allowed or rejected on certain objective criteria (mentioned in the relevant rules) and not arbitrarily or on extraneous considerations. If the application complies with the objective criteria mentioned in the relevant rules, it should be allowed and it should not be rejected. If there is a defect in the application or map, the application should not be straightaway rejected but the applicant should be informed in writing about the defect and the relevant rule which the application or map allegedly violates, and he should be called upon to remove the defect. If the applicant satisfies the concerned authority that in fact there is no defect in the application or map, then sanction should be granted. If, however, the applicant cannot satisfy the concerned authority, and does not remove the defect within a reasonable period, then, after giving the applicant a personal hearing (if he so desires), the concerned authority can reject the application, but in the rejection order, he must give reasons and must refer to the relevant rule which will be violated if the map is sanctioned. This procedure will obviate any misgivings or misapprehensions in this connection, and will be conducive to transparency in administration.

80. Let the Registrar General of this Court send copy of this judgment forthwith to the Chief Secretary and the Urban Development Secretary, U. P. Government, who will communicate it to the Chairman and Vice-Chairman of all Development Authorities as well as other concerned local bodies and authorities in U. P. with the direction that this judgment should be strictly complied with.