without its own fallacies. Recovery of possession from a tenant in default, or for whatever reason can be made by a landlord, even if it is the Nagar Palika or the State, in accordance with the procedure established by law and not by employing the administrative authority or the force of State available at their command. Also, the remarks of the Collector that there is nothing to show that the petitioner holds a 99 years' lease, may not be a well considered finding at all, because it is ultimately acknowledged that the petitioner's predecessor, and thereafter, the petitioner in the leading case, and the petitioners in the other cases as well are tenants who owe rent to the Nagar Palika. It is for the said reason that the respondent-Nagar Palika seeks to recover rent from the petitioners. Thus, this Court thinks that so far as recovery of possession from the petitioner is concerned, the Nagar Palika would be free to take steps in accordance with law, by approaching a forum of competent jurisdiction, and so far as the petitioner is concerned, he would have liberty to establish his case of tenancy on whatever terms he pleads, also in a suit instituted before a Court of competent jurisdiction. It is not for this Court to go into those questions, as these involve disputed questions of fact about the terms of the lease/ tenancy, the right to recovery of possession etc. Thus, these questions are left open to be examined in a suit that may be instituted by one party or the other, for the purpose of relief, to which the concerned party thinks himself/itself entitled.

24. So far as the recovery certificate that has led to this writ petition is concerned, and the impugned order made by the Collector, insofar as it relates to recovery, though for reasons very different than those that have weighed with the Collector, must be upheld. As such, subject to the liberty given above to both parties, these petitions **fail** and are ***dismissed.***

25. No costs.

(2022)02ILR A761
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.12.2020

BEFORE

THE HON'BLE MRS. SUNITA AGARWAL, J.
THE HON'BLE JAYANT BANERJI, J.

Writ C No. 34 of 2020
with other cases

M/s Panchsheel Buildtech Pvt. Ltd.
...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Sanjay Kumar Mishra, Sri Nikhil Agarwal

Counsel for the Respondents:
C.S.C., Sri Mahesh Chandra Chaturvedi (Senior Adv.), Sri Mahesh Narain Singh, Sri Ravi Prakash Pandey

A. Civil Law - UP Urban Planning and Development Act, 1973 – Ch. VI – Sections 15 and 18 – Imposition of infrastructure surcharge and corner charge by Development Authority – Validity challenged – Provision for 10% additional infrastructure charge as envisaged in the First Government Order does not find place in the Second Government Order – Benefit claimed – First Government Order stood amended and degraded/devolved to the extent provided by the Second Government Order – Held, intention of the Second Government Order is clear that it seeks to modify and degrade the First Government Order in terms explicit in the Second Government Order – Waiver of

infrastructure surcharge for reason of responsibility of internal development of the plot in question by the petitioner, cannot be claimed as a right by the petitioner just because the GDA has recommended reconsideration of its imposition – Authority on the State Government and the GDA to impose infrastructure surcharge and corner charge is conferred by Chapter VI of the Act of 1973. (Para 22, 24, 28 and 32)

B. Interpretation of Statute – Rule of *contemporanea exposition* – First Government Order vis-à-vis Second Government Order – Effect – Held, Second Government Order, which has not been challenged by the petitioner, has to be viewed as a conscious decision by the government to modify and degrade/ devolve the First Government Order by removing the clause for imposition of infrastructure surcharge post issuance of the Second Government Order – Neither the express words of the Second Government Order nor the intention thereof are to rescind or abrogate the First Government Order. (Para 28)

C. Transfer of Property Act, 1882 – Section 105 – Document transferring the property in favour of society is a lease–deed, not sale-deed – However, demand of infrastructure surcharge was made by the Development Authority – Validity challenged – First Government Order governing the demand of infrastructure surcharge, its applicability – Held, Lease-deed leave no room for doubt that the transfer of the property in question is not one of transfer of ownership but is a transfer of a right to enjoy such property made for a period of 90 years on payment of premium and rent – Held further, Government Order applies only to such plots of land sold by the Development Authorities – The claim of the GDA of infrastructure surcharge on the property in question pursuant to the First Government Order is *dehors* the entitlement of the GDA under the First Government Order. The demand for infrastructure surcharge from the petitioner Society does not have the mandate of law and as such is illegal. (Para 69, 70 and 71).

D. Interpretation of statute – Estoppel rule – Application – Principle of law discussed – No estoppel would operate against a statute – Private interest would have to give way to public interest. (Para 88)

E. Interpretation of statute – Word 'Vendee' used in the sale-deed – Definition – Original allottee/vendee of development authority executed sale-deed in favour of the petitioner/subsequent purchaser – Claimed that the GDA is stopped from raising any demand for additional charge and it would be deemed that they have waived their right to recover any charge other than what has been paid – Held, the vendees mentioned in the sale deed includes their heirs and successors, executors, administrators and permitted assignees – Petitioners, therefore, would be bound under the terms and conditions of the sale deed dated 01.05.2015. (Para 92 and 96)

Eight writ petitions dismissed; one writ petition allowed. (E-1)

List of Cases cited:

1. Virendra Kumar Tyagi Vs Ghaziabad Development Authority; 2006 (1) AWC 834

2. Rohitash Kumar Vs Om Prakash Sharma; (2013) 11 SCC 451

3. Vasantkumar Radhakisan Vora Vs Board of Trustees of the Port of Bombay; (1991) 1 SCC 761

(Delivered by Hon'ble Jayant Banerji, J.)

The aforesaid bunch of writ petitions have been filed before this Court on issue of imposition of infrastructure surcharge, and, in some cases, imposition of corner charge by way of demand notices issued by the Ghaziabad Development Authority,

Ghaziabad1. Since detailed submissions on facts and law were advanced in the aforesaid Writ-C No.34 of 2020, that case is made the leading petition and is being adjudicated first.

WRIT - C No. - 34 of 2020

(M/S Panchsheel Buildtech Pvt. Ltd. Vs. State Of U P And 3 Others)

1. Heard Shri Nikhil Agarwal, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the remaining respondent nos.2, 3 and 4 representing GDA.

2. This writ petition has been filed seeking the following reliefs:-

"I issue a suitable writ or direction in the nature of certiorari quashing the impugned demand notice dated 10.10.2019 (contained as Annexure no.11 to the writ petition);

II issue a suitable writ or direction in the nature of certiorari quashing the Condition no.4 of the Government Order dated 26.07.2019 (contained as Annexure no.14 to the writ petition) so far it makes the Government Order applicable with immediate effect;

III issue a suitable writ or direction in the nature of mandamus commanding the Ghaziabad Development Authority, Ghaziabad to forthwith execute sale deed of the land in favour of the petitioner; so that the petitioner would be able to execute sale deeds in favour of their flat buyers;

IV issue a suitable writ or direction in the nature of mandamus commanding the Ghaziabad Development Authority, Ghaziabad to grant permission to mortgage to avail loan facility from the Bank concerned."

3. Pursuant to an order of this Court on 11.2.2020, another relief was added, which is as follows:-

"(ia) issue a suitable writ, order or direction in the nature of certiorari quashing the office order dated 11.7.2019 issued by the Finance Controller and 15.7.2019 issued by Secretary, Ghaziabad Development Authority, Ghaziabad (contained as Annexure no. 12 & 13 to the writ petition)."

SUBMISSIONS

4. It is stated that the GDA invited tenders for allotment/sale of plots having an area 2000 sq. mts. or more for the development of Group Housing, etc. The terms and conditions were mentioned in the brochure issued by the GDA giving the complete details of the scheme. A Government Order dated 15.01.19982 provided, inter alia, for charging 10% surcharge by the Development Authorities on properties sold by them towards infrastructure development of the urban area. The condition providing for realisation of infrastructure surcharge led to increase in cost of big plots which were to be sold for purpose of Group Housing resulting in creation of imbalance and lack of interest on part of interested persons to purchase plots due to heavy cost involved. Accordingly, a proposal was submitted before the Board of the GDA that the First Government Order requires reconsideration and no infrastructure surcharge or corner charge be levied on the sale of properties by GDA having area in excess of 2000 square meters.

5. It is contended that the Board of the GDA approved the proposal on 17.10.2014. Meanwhile by a letter dated 09.10.2014, the Vice-Chairman forwarded the recommendation to the State Government for taking a decision regarding imposition of infrastructure surcharge and corner charge.

6. The GDA published a brochure for auction of plots of land in the developed schemes for purpose of group housing and other commercial purposes. It was clearly mentioned in that brochure that the matter with regard to the infrastructure surcharge was referred to the State Government and in case the State Government decided to realize the same, then it would be payable by the allotees. There was no clause for realising corner charge from the allottees. The petitioner bid successfully for Group Housing No. GH-01(18A), Vaishali Scheme, Sector-3, Ghaziabad for an area of 7768 sq. mts. and a letter of acceptance was issued to the petitioner on 27.12.2014. An agreement to sell was executed between the petitioner and the GDA which was registered on 10.02.2015. The petitioner constructed flats as per the norms and sanctioned map and a completion certificate was issued by the GDA on 22.08.2019. The petitioner paid the entire installments and there is nothing due to the GDA from the petitioner. It is stated that the petitioner, after completion of construction, has sold more than 80% of the flats to the allottees but, since no sale-deed has yet been executed by the GDA in favour of the petitioner, the petitioner is not in a position to execute sale-deeds in favour of the flat buyers, who all have made full and final payment to the petitioner. By means of a demand notice dated 10.10.2019, the petitioner has been asked to deposit a sum of Rs.14,06,81,588/- towards corner charge, infrastructure surcharge, lease rent and freehold charge. The petitioner, thereafter, learnt that an audit objection was raised regarding the infrastructure surcharge and as such the demand notice was raised by the GDA.

7. It is further stated that in 2014, after the GDA requested the State Government for amending the provisions of the First Government Order, the State Government issued another Government Order dated 26.07.20183 by which the clauses for imposition of infrastructure surcharge and corner charge were removed by the Government. It is contended that once the First Government Order was rescinded by means of the Second Government Order, there was no occasion for the GDA to realise infrastructure surcharge and corner charge from the petitioner. It is stated that the petitioner has already paid the lease rent and freehold charges and, hence, demanding additional lease rent and freehold charges is illegal. Learned counsel for the petitioner has referred to the judgment of this Court in the matter of **Virendra Kumar Tyagi vs. Ghaziabad Development Authority4** to contend that in a similar matter with regard to payment of mutation charges imposed under the provisions of sub-section (2A) of Section 15 of the Uttar Pradesh Urban Planning and Development Act, 19735, this Court held that the demand for mutation charges pursuant to a Government Order is illegal and without authority of law and the demand was quashed. It is further stated that the judgment in Virendra Kumar Tyagi (supra) was relied upon by the coordinate Bench of this Court in Writ-C No.46967 of 2015 Mahesh Chandra Agarwal vs. State of U.P. & Ors.) and a similar demand issued by a Development Authority with regard to mutation charges was set aside. Challenge

to these judgments before the Supreme Court was negated by dismissal.

8. It is stated that it was on the basis of assurance of the GDA as appearing in the brochure, did the petitioner agree to bid for and purchase the plot in question and the agreement to sell (Annexure-7 to the writ petition) was executed. It is stated that the impugned demand notice dated 10.10.2019 is for a sum of Rs.14,06,81,588/- which includes 10% corner charge, 10% infrastructure surcharge and 12% lease rent and freehold charge. This demand clubs all the alleged dues together and no breakup of the charges has been given. Learned counsel urged that the Court apply the rule of contemporanea expositio in the interpretation of the Second Government Order and interpret it as rescinding the First Government Order in light of the resolution and recommendation of the GDA and thus no infrastructure surcharge and corner charge be levied after the issuance of the Second Government Order. In this regard, the learned counsel for the petitioner relied upon a judgment of the Supreme Court in the case of **Rohitash Kumar v. Om Prakash Sharma6** (paragraphs 12, 14 and 19).

9. No counter affidavit has been filed by the respondent no.1-State Government.

10. A counter affidavit has been filed on behalf of the respondent nos.2 to 4 (GDA and its authorities). It is admitted that the petitioner being the highest bidder has paid the total amount towards the plots in question which was Rs.59,79,82,000/-. Apart from the aforesaid, 12% lease rent and freehold charges amounting to Rs.7,17,57,870/- was also deposited by the petitioner. It has been stated that the allotment letter also indicated the fact that if the State Government directs charging of the infrastructure surcharge then the allottees would be liable to pay the same. It is stated that when a local audit was conducted by the GDA in the year 2013-14, objections were raised in two matters regarding non-charging of infrastructure surcharge in view of the First Government Order. Though objections raised by the Audit Department were duly replied, but the Audit Department was not satisfied with the reply. Thereafter, a review meeting was conducted under the chairmanship of the Principal Secretary, Housing, Government of U.P., wherein directions were issued to the effect that in respect of those properties/plots, which have been allotted during the period from 15.01.1998 to 26.07.2018, notice should be issued to the allottees concerned for recovery of infrastructure surcharge. It is stated that the notice dated 10.10.2019 is in consonance with the First Government Order. As per the terms of the brochure itself, since the Government has taken a decision, the infrastructure surcharge is liable to be paid by the petitioner. Since the allotment of the plots were made on 'AS IS WHERE IS" basis and as such the corner charge is levied only on those plots which were situated on a corner. The plot of the petitioner is situated on a corner, hence, the petitioner is required to pay the corner charges also. It is stated that under the direction of the Government, on the amount of the infrastructure surcharge and the corner charge, additional 12% towards lease rent and freehold charge are also payable and as such the demand was incorporated in the letter dated 10.10.2019.

11. In the rejoinder affidavit, the allegations contrary to the interest of the petitioner in the counter affidavit have been denied. It has been specifically stated that

there was no provision of corner charge in the brochure, allotment letter and registered agreement to sell issued/ executed by the GDA and, therefore, the demand for payment of corner charge is arbitrary, unreasonable and illegal.

DISCUSSIONS AND ANALYSIS

12. Chapter VI of the Act of 1973 provides for acquisition and disposal of land. Section 17 provides for compulsory acquisition of land where land is required for the purpose of development or for any other purpose, under the Act. The land so acquired by the State Government may be transferred to the authority or any local authority for the purpose for which the land was acquired after its possession has been taken, on payment by authority or the local authority of the compensation awarded under that Act and of the charges incurred by the Government in connection with the acquisition. Section 18 of the Act of 1973 reads as follows:-

"18. Disposal of land by the Authority or the local authority concerned.-

(1) Subject to any directions given by the State Government in this behalf, the Authority or, as the case may be, the local authority concerned may dispose of-

(a) any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit.

to such persons, in such manner and subject to such terms and conditions as it considers expedient for securing the development of the development area according to plan.

(2) Nothing in this Act shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, but subject thereto, references in this Act, to the disposal of land shall be construed as references to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

.....

....."

13. Section 18, therefore, provides for disposal of the land by the authority, subject to any directions given by the State Government in this behalf in such manner and subject to such terms and conditions as it considers expedient for securing the development of the development area according to plan.

14. There is no dispute that the GDA has dealt with the land in question in accordance with the Section 18 of the Act of 1973. The terms and conditions and the manner of disposal of the land in question by the GDA appears in its brochure, which is enclosed as Annexure-1 to the writ petition. The First Government Order that is issued under the authority of the Governor of the State contains directions given to the development authorities for infrastructural development of cities and specifies specific portions of the various sources of income of the development authorities to be deposited in a separate

bank account. The First Government Order is being quoted in its entirety :-

"उत्तर प्रदेश सरकार
आवास अनुभाग–1
संख्याः152 / 9–आ–1–1998
लखनऊः दिनांक 15 जनवरी, 1998

कार्यालय ज्ञाप

विकास प्राधिकरणों द्वारा नगर के इन्फ्रास्ट्रक्चर विकास के प्रति योगदान सुनिश्चित करने के उद्देश्य से विकास प्राधिकरणों की कुछ श्रोतों से आप के निर्धारित अंश को इस प्रयोजन हेतु निर्दिष्ट करने का निर्णय लिया गया है। तदनुसार श्री राज्यपाल ने सहर्ष निदेशित किया है किः–

1. नीचे प्रस्तर–5 में उल्लिखित आय को विकास प्राधिकरण के सामान्य पूल में न डालकर एक अलग बैंक खाते में, जो आवासीय इन्फ्रास्ट्रक्चर हेतु निहित होगा, में जमा की जाये।

2. यह खाता विकास प्राधिकरण के स्तर पर होगा, परन्तु इस खाते की धनराशि से व्यय, मण्डलायुक्त की अध्यक्षता में गठित एक समिति के अनुमोदन से किया जायेगा जिसके सदस्य जिलाधिकारी, उपाध्यक्ष, विकास प्राधिकरण, मुख्य नगर अधिकारी, नगर निगम / अधिशासी अधिकारी, नगरपालिका परिषद व जल निगम के प्रतिनिधि होगें।

3. उक्त खाते से किये जाने वाले व्यय शासन द्वारा समय≤ पर जारी शासनादेश में निहित रीति से किये जायेंगे।

4. इस खाते से प्रत्येक वर्ष 80 प्रतिशत पूंजीगत व्यय किया जायेगा तथा अधिकतम 20 प्रतिशत राजस्व व्यय किया जा सकेगा।

5. इस खाते में निम्नलिखित प्राप्तियाँ जमा की जायेगीः–

(क) निम्न स्तरीय भू–उपयोग में परिवर्तन करते समय पवितर्न शुल्क का 90 प्रतिशत तथा शेष 10 प्रतिशत विकास प्राधिकरण अंश।

(ख) विकास प्राधिकरण की योजना के बाहर के शहरी क्षेत्र के मानचित्र स्वीकृति करने हेतु विकास शुल्क तथा सुदृ

(घ) अनाधिकृत निर्माण के सम्बन्ध में प्राप्त होने वाले शमन शुल्क का 50 प्रतिशत अंश तथा शेष 50 प्रतिशत विकास प्राधिकरण अंश।

(च) विकास प्राधिकरण द्वारा अपनी सम्पत्तियों को फ्री–होल्ड किये जाने से प्राप्त होने वाली आय का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण अंश।

(छ) विकास प्राधिकरण द्वारा बेचे जा रहे भूखण्डों के मूल्य पर 10 प्रतिशत अधिभार लगाते हुए प्राप्त होने वाली अतिरिक्त आय की शत–प्रतिशत अंश।

(ज) विक्रय विलेख के निबन्धन से प्राप्त आय का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण अंश।

आज्ञा से,

अतुल कुमार गुप्ता
सचिवष

15. In its meeting held on 4.10.2014, a committee of officials constituted by the GDA noted that for bulk sale for Group Housing and other large plots of land for 30-35% of additional area of land, the value of the same is received by the GDA and moreover for the internal development of such large plot of land, the GDA does not have to make internal development. For sale of large plots of land, 1.5 - 2 time of the value is fixed and, thus, imposition of 10% infrastructure charge and 10% corner charge ought to be reconsidered. It was noted that several other Development Authorities are not exacting infrastructure surcharge. Due to the extra imposition of the infrastructure surcharge, the price of the plots of land increase resulting in lack of interest in purchasing them. The Committee noted that plots of land having an area in excess of 2000 sq. mts. are identified in advance and the purchasers, after seeing the site and location, place their bids for the plots of land; and the plots

of land having better location receive higher bids than plots at ordinary location and as such there is no rationale for imposition of corner charge. Thus, it was proposed that with regard to the First Government Order, the Government be requested not to impose infrastructure surcharge over such plots of land and in the brochure it be provided that in case the Government again directs imposition of infrastructure surcharge then the purchasers would have to pay the same. The recommendations of the Committee were approved at the meeting of the Board on 17.10.2014. The Vice-Chairman of the GDA had, in the meantime, written a letter dated 09.10.2014 to the Principal Secretary of the respondent no.1 making his recommendation in accordance with the views/proposals expressed by the aforesaid Committee in its meeting dated 04.10.2014. The brochure of the GDA includes the terms and conditions for allotment of Group Housing and non-residential plots of 2000 sq. mts. or above, through a two bid system in various schemes of the GDA. Certain clauses of the said brochure are quoted below:-

"7.8 Regarding imposition of 10% infrastructure surcharge as per Government Order No.-152/9-Aa-1-1998 Avas anubhag-1 Lucknow dated 15.01.1998, matter is referred to Government with recommendation of not to impose it extra. The decision of Government in this regard will be applicable and binding.

7.9 The plots are to be allotted on a free hold basis. Lease rent and free hold charge @ 12% of total bid amount will be payable extra at the time of agreement/sale deed registered, as the case may be.

.....

7.16 Applicants are advised to inspect the site and get the information about any process regarding tender before submitting the tender in the tender box. After submitting the tender no objection will be entertained.

.....

8.5 If allottee adopts the pay plan-A, possession will be given after depositing full payment, 12% lease rent and freehold charge on total bid amount and registered sale deed executed in his favor. If the allottee adopts in the pay plan-B, then possession of plot will be given to the allottee of payment of 25% of the bid amount with 12% lease rent and freehold charge on total bid amount and registered sale agreement of full stamp value executed between GDA and the allottee. Accordingly, after possession, the allottee can plan a scheme for construction on the entire land within the prescribed bye-laws of GDA/as per FAR/ground coverage and land use published in newspapers/mentioned in Table-1 and can get the approval by GDA, the allottee will be entitled to have plan sanctioned by the GDA and start construction. The allottee shall be free to advertise the scheme at this own cost and risk, but in case of plan-B, allottee will not transfer any property (shop/flat as the case may be) to any body before sale deed is executed in their favor from GDA.

.....

9.7 Any money due to the GDA from the seller in respect of the plots shall be recoverable as arrears of the land revenue

from the buyer besides other modes and rights of recovery.

.....

9.9 The water supply, sewerage, drainage and electricity lines as per specification and standard shall be provided up to the the boundary of the property by GDA. The internal work shall be completed by the allottee.

9.10 Plots will be allotted on "AS is-Where is" basis and possession of plot will be given to allottee on "As is-where is" basis also. No objection will be entertained later.

.....

10.00 Stamp Duties and Other Charges:

The cost and expenses regarding stamp duty, registration charges of agreement to sale/sale deed or any other such documents required in this behalf including all incidental expenses shall be borne by the allottee. The allottee shall be bound to pay the duty of transfer of immovable property by State Government, Municipal Corporation or any other duty or charge that may be levied by any other authorities."

15. The plot in question found place in an agreement to sell executed between the GDA and the petitioner, which was registered on 10.02.2015.

16. In this agreement to sell, receipt of 25% of the total premium and 12% lease rent and freehold charge was acknowledged by the GDA and balance of 75% of the total premium, payable in four half yearly installments alongwith interest, was payable. One of the clauses in the agreement to sell is as follows:-

"8. The Second Party shall be liable to pay rates, taxes, charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction."

17. Having entered into a contract, in this case an agreement to sell, executed subsequent to the issuance of the brochure by the GDA, the petitioner stood bound by the terms of the conveyance. Thenceforth, the terms of the brochure were subject to the terms of the conveyance and the petitioner became liable thereunder. The petitioner committed itself to pay the rates, charges, taxes and assessments as envisaged in Clause 8 of the agreement to sell dated 10.02.2015.

18. On 22.08.2019 the GDA issued a completion certificate in favour of the petitioner under the provisions of Section 15A(2) of the Act of 1973. By another letter dated 22.08.2019, the petitioner was informed that the payment of the entire installments pertaining to the plot in question had been made. It was specified that if in the future any amount of the GDA is found due, that would have to be deposited.

19. By means of the letter dated 10.10.2019 the petitioner was informed that against the plot in question, 10% corner charge and 10% infrastructure surcharge and 12% of the lease rent and free hold charge amounting to Rs. 14,06,81,588.00/- is to be deposited within a month. Annexure No. 12 to the petition is a letter dated 11.07.2019 addressed by the Finance Controller to the Vice-Chairman of the GDA referring to a meeting dated 27.05.2019 chaired by the Principal

Secretary in which it was directed that between the period of First Government Order and the Second Government Order, the infrastructure surcharge be recovered and notice be issued in this regard. There is yet another inter-departmental letter issued by the Additional Secretary of the GDA on 15.07.2019 (Annexure No. 13 to the writ petition) directing that all those properties that were auctioned or sold in bulk with the permission of the Board between 15.01.1998 and 26.07.2018 on which infrastructure surcharge has not been imposed then, as sequel to the objections raised by the CAG, steps for recovering of infrastructure surcharge are required to be taken.

20. At this stage it is pertinent to refer to the Second Government order dated 26.07.2018 which has been enclosed as Annexure No. 14 to the writ petition. The Second Government Order is as follows:

''उत्तर प्रदेश शासन''
आवास एवं शहरी नियोजन अनुभाग–1
संख्याः 948(1)/आठ–1–18–44विविध/18
लखनऊः दिनांक 26 जुलाई, 2018

~~कार्यालय ज्ञाप~~

विकास प्राधिकरणों द्वारा नगर के इन्फ्रास्ट्रक्चर विकास के प्रति योगदान सुनिश्चित करने के उद्देश्य से आवास एवं शहरी नियोजन अनुभाग–1, उत्तर प्रदेश शासन के कार्यालय ज्ञाप संख्या–152/9–आ–1–1998, दिनांक 15.01.1998 के अधीन विकास प्राधिकारणों की कुछ स्रोतों से आय के निर्धारित अंश को एक अलग बैंक खाते जो आवसीय इन्फ्रास्ट्रक्चर हेतु निहित है, में जमा किए जाने की व्यवस्था है। परन्तु उस खाते में जिस क्षेत्र/कालोनी से शुल्क (विशेष कर विकास शुल्क) जमा किया जा रहा है उसका उसी क्षेत्र/ कालोनी विशेष में उपयोग सुनिश्चित किये जाने हेतु व्यवस्था नहीं है। इसके अतिरिक्त कार्यालय ज्ञाप संख्या–152/9–आ–1–1998 दिनांक 15.01.1998 के जारी होने के पश्चात शासन द्वारा क्रय–योग्य एफ.ए.आर. शुल्क का निर्धारण किया गया है तथा विकास शुल्क, नगरीय विकास प्रभार एवं भू–उपयोग परिवर्तन प्रभार नियमावलियॉ प्रख्यापित की गई हैं, जिनके प्राविधानों के दृष्टिगत उपर्युक्त कार्यालय ज्ञाप दिनांक 15.01.1998 में संशोधन किया जाना आवश्यक है।

2– उपरोक्त के दृष्टिगत कार्यालय–ज्ञाप संख्या–152/9–आ–1–1998, दिनांक 15.01.1998 को अवक्रमित करते हुए श्री राज्यपाल महोदय उत्तर प्रदेश नगर योजना और विकास अधिनियम, 1973 की धारा–41 की उपधारा–(1) द्वारा प्रदत्त अधिकारों के अधीन निम्न निर्देश देते हैः–

2.1– विकास प्राधिकरण की निम्नलिखित स्रोतों से प्राप्त होने वाली आय को प्राधिकरण के सामन्य पूल में न डालकर निम्नानुसार दो अलग–अलग बैंक खातों में जमा किया जाएगाः–

(क) नगर स्तरीय आवस्थापना विकास खाता

(1) उत्तर प्रदेश नगर योजना और विकास (नगरीय विकास प्रभार का निर्धारण, उद्ग्रहण और संग्रहण) नियमावली, 2014 के अधीन नगरीय विकास प्रभार के रूप में प्राप्त होने वाली धनराशि का शत– प्रतिशत अंश।

(2) उत्तर प्रदेश नगर योजना और विकास (भू–उपयोग परिवर्तन शुल्क का निर्धारण, उदग्रहण एवं संग्रहण) नियमावली, 2014 के अधीन भू–उपयोग परिवर्तन शुल्क के रूप में प्राप्त होने वाली धनराशि का शत–प्रतिशत अंश।

(3) उत्तर प्रदेश नगर योजना और विकास अधिनियम, 1973 की धारा–32 के अधीन अनाधिकृत निर्माण के शमन से शमन शुल्क के रूप में प्राप्त होने वाली धनराशि का 50 प्रतिशत अंश तथा शेष 50 प्रतिशत विकास प्राधिकरण का अंश।

(4) विकास प्राधिकारण द्वारा अपनी सम्पत्तियों को फ्री–होल्ड किए जाने से प्राप्त होने वाली आय का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण का अंश।

(5) विकास प्राधिकरण द्वारा विकसित/सृजित सम्पत्तियों के विक्रय–विलेख के निबन्धन से प्राप्त होने वाली आय का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण का अंश।

(ख) क्षेत्रीय अवस्थापना विकास खाता

(1) उत्तर प्रदेश नगर योजना और विकास (विकास शुल्क का निर्धारण, उद्ग्रहण एवं संग्रहण) नियमावली, 2014 के अधीन विकास शुल्क के रूप में प्राप्त होने वाली धनराधि का शत–प्रतिशत अंश।

(2) अनाधिकृत कालोनियों के नियमितीकरण की कार्यवाही के अन्तर्गत प्राप्त होने वाली धनराधि का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण का अंश।

(3) क्रय–योग्य एफ0ए0आर0 शुल्क से प्राप्त होने वाली धनराशि का 90 प्रतिशत अंश तथा शेष 10 प्रतिशत विकास प्राधिकरण का अंश।

2.2 नगर स्तरीय एवं क्षेत्रीय अवस्थापना विकास खाते में से प्रत्येक वर्ष 80 प्रतिशत पूँजीगत तथा अधिकतम 20 प्रतिशत राजस्व व्यय किया जा सकेगा। उक्त खातों में से पूँजीगत व्यय निम्न समितियों के अनुमोदन से किया जाएगाः–

(1) नगर स्तरीय अवस्थापना विकास खाते में से नगर की सामान्य अवस्थापना सुविधाओं के सम्बर्द्धन/विस्तार हेतु सम्बन्धित मण्डलायुक्त की अध्यक्षता में गठित एक समिति जिसमें जिलाधिकारी, उपाध्यक्ष विकास प्राधिकरण, नगर आयुक्त/अधिशासी अधिकारी तथा जल निगम के प्रतिनिधि सदस्य होंगे के अनुमोदन से व्यय किया जाएगा।

(ख) क्षेत्रीय अवस्थापना विकास खाते में सक सम्बन्धित क्षेत्र/ कालोनी के विकास कार्यों हेतु उपाध्यक्ष, विकास प्राधिकरण की अध्यक्षता में गठित एक समिति, जिसमें नगर आयुक्त/ अधिशासी अधिकारी, प्राधिकरण के मुख्य अभियन्ता/ प्रभारी अभियंत्रण तथा जल निगम के प्रतिनिधि सदस्य होंगे, के अनुमोदन से व्यय किया जाएगा। प्राधिकरण द्वारा अनाधिकृत कालोनियों के नियमितीकरण की कार्यवाही के अन्तर्गत प्राप्त होने वाली धनराशि का ब्यौरा अलग से रखा जाएगा और इस मद में प्राप्त होने वाली आय को उसी कालोनी में व्यय किया जाएगा, जिससे वह आय प्राप्त हो रही है।

3– इस सम्बन्ध में पूर्व में जारी सुसंगत शासनादेश तत्सीमा तक संशोधित समझे जाएंगे।

4– उपरोक्त आदेश तत्काल प्रभाव से लागू होंगे।

ह0अ0
नितिन रमेश गोकर्ण
प्रमुख सचिव

संख्या एवं दिनांक तदैव।

प्रतिलिपिः– निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः–

1. समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव, उ0प्र0 शासन।
2. राजस्व एवं सचिव, राजस्व परिषद, उत्तर प्रदेश।
3. उपनिरीक्षण, निबन्धन, उत्तर प्रदेश।
4. समस्त मण्डलायुक्त, उत्तर प्रदेश।
5. आवास आयुक्त, उ0प्र0 आवास एवं विकास परिषद, लखनऊ।
6. समस्त जिलाधिकारी, उत्तर प्रदेश।
7. उपाध्यक्ष, समस्त विकास प्राधिकरण।
8. अध्यक्ष, समस्त विशेष क्षेत्र विकास प्राधिकरण।
9. नियत प्राधिकारी, समस्त विनियमित क्षेत्र, उत्तर प्रदेश।
10. निदेशक(प्रशासन) आवास बन्धु, उ0प्र0, लखनऊ।
11. मुख्य नगर एवं ग्राम नियोजक, उत्तर प्रदेश।
12. निदेशक, आवास बन्धु को इस आशय से प्रेषित कि इस कार्यालय ज्ञाप को आवास एवं शहरी नियोजन विभाग की वेबसाइट पर अपलोड कराना सुनिश्चित करें।
13. गार्ड फाइल।

आज्ञा से,

ह0 अस्पष्ट
26/07/18
(राजेश कुमार पाण्डे)
विशेष सचिव

21. The point to be determined is whether the GDA is entitled to recover an amount of 10% as infrastructure surcharge and 10% corner charge from the petitioner with respect to the plot in question.

22. It is not in dispute that imposition of 10% infrastructure surcharge on plots of land being sold by the Development

Authorities was required to be made pursuant to the First Government Order. Section 18 of the Act of 1973 permits the disposal of the land by the GDA subject to any directions given by the State Government and in such manner and subject to such terms and conditions as the GDA considers expedient for securing the development of the developing area according to the plan. It is nobody's case that the property in question is outside the developmental area of the GDA. It appears from the record that the GDA had voiced its concerns to the government for the first time in its letter dated 09.10.2014 regarding the imposition of 10% infrastructure surcharge and 10% corner charge on the large plots of land sold by it exceeding 2000 square metres in area. It can, therefore, be presumed that prior to that, the GDA was imposing and recovering 10% infrastructure surcharge (as provided in the First Government Order) and 10% corner charge (depending on corner location) on all plots of land being disposed of by it under the provisions of Chapter VI of the Act of 1973. In view of the concerns reflected by the Committee constituted by the GDA in its meeting dated 04.10.2014, the matter was sent for consideration of the Government. The Second Government Order was issued for modifying the First Government Order. As such, by means of the Second Government Order the First Government Order was modified and downgraded. The Second Government Order provided for allocation of the charges and fees recovered by the Development Authorities under various heads of account whereafter it was provided that the previous related Government Orders would be considered as amended to the extent provided in the Second Government Order and the Second Government Order would come into effect immediately. The provision for 10% additional infrastructure charge as envisaged in the First Government Order does not find place in the Second Government Order. The Second Government Order was issued on 26.07.2018.

23. The contention of the learned counsel for the petitioner that the word 'vodzfer' appearing in the Second Government Order, which is used in reference to the First Government Order, means 'rescinded', thereby implying that the First Government Order seized to operate ab initio, cannot be accepted. The word 'vodzfer' has been translated to English in Rajpal Advanced Learner's Hindi-English Dictionary authored by Dr. Hardev Bahri (2013 Edition) as follows:-

अवकमित ;आतंउपजद्ध a. degraded, devolved.

24. Therefore, the First Government Order stood amended and degraded/devolved to the extent provided by the Second Government Order. The Second Government Order came into effect on the date of its issue which is 26.07.2018 and would have effect since that day. The inter-departmental letter dated 11.07.2019 written by the Finance Controller to the Vice-Chairman of the GDA reflects the decision taken by the Principal Secretary in the meeting held under his Chairmanship on 27.05.2019 pursuant to the audit objection raised by the CAG. That decision affirms the situation arising out of the issuance of the Second Government Order, that is to say, that infrastructure surcharge would be liable to be paid from the date of the First Government Order to the date of the Second Government Order and notices be issued accordingly. The decision taken by the Principal Secretary in the meeting

dated 27.05.2019 cannot be faulted as it is merely reflects the consequence of the Second Government Order.

25. The concerns voiced by the GDA regarding payment of infrastructure surcharge raised in the letter of Vice-Chairman of the GDA to the State Government on 09.10.2014 have, for all facts and purposes, been addressed by the issuance of the Second Government Order.

26. The GDA in its brochure (Annexure No. 1 to the writ petition) has categorically specified the imposition of 10% infrastructure surcharge as per the First Government Order with the condition that decision of the Government in this regard would be applicable and binding. In the agreement to sell dated 10.02.2015 the petitioner admits its liability to pay rates, taxes, charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction. Thus the contingency envisaged in clause 8 of the agreement to sell became enforceable by the GDA when the audit objection was raised and acted upon by the GDA pursuant to the directions of the Principal Secretary in the meeting held on 27.05.2019. There is no dispute between the parties that the internal work was required to be completed by the petitioner. The water supplies, sewerage, drainage, and electricity lines as per specification and standard were to be provided by the GDA up to the boundary of the property in question. This clause is mentioned appears at point no. 12 in the agreement to sell. However, this does not take away the fact that the imposition of 10% infrastructure surcharge by the First Government Order formed part of the brochure and the petitioner acquiesced to purchase the plot in question after going through the brochure and executing the agreement to sell with its 'eyes open' with regard to its imposition.

27. The judgment of **Rohitash Kumar** cited by the learned counsel for the petitioner pertains to a decision in a service matter. The submission on behalf of the appellants in that case before the Supreme Court was that officers that are selected in response to a single advertisement, and through the same selection process, if have been given training in two separate batches, for administrative reasons i.e. police verification, medical examination, etc., cannot be accorded different seniority by bifurcating them into two or more separate batches, and, that the provisions of Rule 3 of the Border Security Force (Seniority, Promotion and Superannuation of Officers) Rules, 1978 (hereinafter referred to as "the 1978 Rules"), were wrongly interpreted by the High Court. The Supreme Court observed as follows:-

"11. This Court applied the rule of contemporanea expositio, as the Court found that the same is a well-established rule of the interpretation of a statute, with reference to the exposition that it has received from contemporary authorities. However, while doing so, the Court added words of caution to the effect that such a rule must give way where the language of the statute is plain and unambiguous. This Court applied the said rule of interpretation by holding that contemporanea expositio as expounded by administrative authorities, is a very useful and relevant guide to the interpretation of the expressions used in a statutory instrument. The words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance

with respect to the area in which the said law is in force or by the people who ordinarily deal with them. .....

12. In N. Suresh Nathan v. Union of India [1992 Supp (1) SCC 584 : 1992 SCC (L&S) 451 : (1992) 19 ATC 928] and M.B. Joshi v. Satish Kumar Pandey [1993 Supp (2) SCC 419 : 1993 SCC (L&S) 810 : (1993) 24 ATC 688] this Court observed that such construction, which is in consonance with the long-standing practice prevailing in the department concerned in relation to which the law has been made, should be preferred.

13. In Senior Electric Inspector v. Laxminarayan Chopra [AIR 1962 SC 159] and J.K. Cotton Spg. & Wvg. Mills Ltd. v. Union of India [1987 Supp SCC 350 : 1988 SCC (Tax) 26 : AIR 1988 SC 191] it was held that while a maxim was applicable with respect to construing an ancient statute, the same could not be used to interpret Acts which are comparatively modern, and in relation to such Acts, interpretation should be given to the words used therein, in the context of new facts and the present situation, if the said words are in fact capable of comprehending them.

14. In Desh Bandhu Gupta and Co. v. Delhi Stock Exchange Assn. Ltd. [(1979) 4 SCC 565 : AIR 1979 SC 1049] this Court observed that the principle of contemporanea expositio i.e. interpreting a document with reference to the exposition that it has received from the competent authority, can be invoked though the same will not always be decisive with respect to questions of construction. Administrative construction i.e. contemporaneous construction that is provided by administrative or executive officers who are responsible for the execution of the Act/Rules, etc. should generally be clearly erroneous, before the same is overturned. Such a construction, commonly referred to as practical construction although not controlling, is nevertheless entitled to be given considerable weightage and is also highly persuasive. It may however be disregarded for certain cogent reasons. In a clear case of error, the Court should, without hesitation, refuse to follow such a construction for the reason that, "wrong practice does not make the law". .....

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17. This principle has also been applied in judicial decisions, as it has been held consistently that long-standing settled practice of the competent authority should not normally be disturbed, unless the same is found to be manifestly wrong, "unfair". .....

18. The rules of administrative interpretation/executive construction may be applied either where a representation is made by the maker of a legislation at the time of the introduction of the Bill itself, or if construction thereupon is provided for by the executive, upon its coming into force, then also, the same carries great weightage. .....

19. In view of the above, one may reach the conclusion that administrative interpretation may often provide the guidelines for interpreting a particular rule or executive instruction, and the same may be accepted unless, of course, it is found to be in violation of the rule itself.

20. The normal function of a proviso is generally to provide for an exception i.e. exception of something that is outside the ambit

of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope.

21. The proviso to a particular provision of a statute, only embraces the field which is covered by the main provision, by carving out an exception to the said main provision.

22. In a normal course, a proviso can be extinguished from an exception for the reason that exception is intended to restrain the enacting clause to a particular class of cases while the proviso is used to remove special cases from the general enactment provided for them specially.

23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the court has no choice but to enforce it in full rigour. It is a well-settled principle of interpretation that hardship or inconvenience caused cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. [Vide CIT (Ag) v. Keshab Chandra Mandal [AIR 1950 SC 265] and D.D. Joshi v. Union of India [(1983) 2 SCC 235 : 1983 SCC (L&S) 321 : AIR 1983 SC 420] .]

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25. In Mysore SEB v. Bangalore Woollen Cotton & Silk Mills Ltd. [AIR 1963 SC 1128] (AIR p. 1139, para 27) a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. In Martin Burn Ltd. v. Corpn. of Calcutta [AIR 1966 SC 529] this Court, while dealing with the same issue observed as under: (AIR p. 535, para 14)

"14. ... A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a court likes the result or not."

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26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein is unequivocal.

27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim "A verbis legis non est

recedendum" means, "from the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. .....

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.....

33. If we apply the settled legal propositions referred to hereinabove, no other interpretation is permissible. The language of the said Rule is crystal clear. There is no ambiguity with respect to it. The validity of the Rule is not under challenge. In such a fact situation, it is not permissible for the Court to interpret the Rule otherwise. The said proviso will have application only in a case where officers who have been selected in pursuance of the same selection process are split into separate batches. Interpreting the Rule otherwise would amount to adding words to the proviso, which the law does not permit."

28. Now, on to consider the Second Government Order in the light of the rule of contemporanea expositio. The words in Hindi used in the Second Government Order are translated as 'modification' of the First Government Order and 'degrading/devolving' it and issuing the directions mentioned in the Second Government Order. It is in this light that clause 4 of the Second Government Order would have to be read with says that the aforesaid order shall be applied with immediate effect. As such, the intention of the Second Government Order is clear that it seeks to modify and degrade the First Government Order in terms explicit in the Second Government Order. Waiver of infrastructure surcharge for reason of responsibility of internal development of the plot in question by the petitioner, cannot be claimed as a right by the petitioner just because the GDA has recommended reconsideration of its imposition. The Second Government Order, which has not been challenged by the petitioner, has to be viewed as a conscious decision by the government to modify and degrade/ devolve the First Government Order by removing the clause for imposition of infrastructure surcharge post issuance of the Second Government Order. Neither the express words of the Second Government Order nor the intention thereof are to rescind or abrogate the First Government Order. The direction of the Principal Secretary in the meeting dated 27.05.2019 is reflected in the inter-departmental letter of the GDA dated 11.07.2019 directing issuance of notices regarding recovery of infrastructure surcharge for the period between 15.01.1998 and 26.07.2018. This direction stems from a correct reading of the Second Government Order and calls for no interference from this Court. The language of the Second Government Order is clear and unambiguous. No different

interpretation is called for and neither are any words to be added or subtracted in the Second Government Order.

29. With regard to imposition of corner charges, the learned counsel for the petitioner has referred to the brochure/recommendations made by the Committee of the GDA in its meeting of 04.10.2014 and the letter dated 09.10.2014 issued by the Vice-Chairman of the GDA to the State Government in support of his contention regarding non-chargeability of corner charges. However, payment of corner charge is governed not by such recommendations or letters but by the relevant rules regarding registration and allotment of plots / buildings of the GDA which provide for the same. There is no specific denial by the petitioner that the plot in question is a corner plot. Moreover, the petitioner has, in the agreement to sell dated 10.02.2015, agreed to and accepted his liability to pay charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction. It is not the contention of the petitioner that the imposition of corner charges is contrary to any legal provision or that the GDA is not otherwise entitled to charge the same in terms of the relevant rules relating to allotment of land under the provisions of Chapter VI of the Act of 1973.

30. Therefore, the imposition of 10% infrastructure surcharge and 10% corner charge alongwith the corresponding incidence of 12% lease rent and freehold charges demanded by the GDA in the impugned notice dated 10.10.2019 cannot be faulted.

31. The reliance by the learned counsel for the petitioner on the judgement of this Court in **Virendra Kumar Tyagi** is misplaced. The challenge in that case was the imposition of mutation fee at the rate of 1% of the sale consideration which rate was not prescribed by Rules even though Section 15(2A) of the Act of 1973 provided for levy of mutation fee in such manner and at such rates as may be prescribed. This court held that the word 'prescribed' means prescribed by Rules under the Act of 1973 in view of the provisions of sub-section (33A) of Section 4 of the General Clauses Act, 1904 and the Rules to be framed by the State Government under Section 55 of the Act of 1973 had to be notified in the Gazette which was admittedly not done. Therefore the demand for mutation charges was held to be illegal and without the authority of law.

32. However, in the instant case, as elaborated above, authority on the State Government and the GDA is conferred by Chapter VI of the Act of 1973. The rules pertaining to allotment of land and the First and Second Government orders are apparently framed / issued in exercise of the authority conferred by Chapter VI of the Act of 1973.

33. Thus the challenge to the impugned demand notice dated 10.10.2019 imposing infrastructure surcharge falls and the writ petition is, accordingly, dismissed.

WRIT - C No. - 36232 of 2019

M/S We Two Homes Pvt Ltd v. State Of U.P. & others

34. Heard Shri Kshitij Shailendra, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh,

learned counsel appearing for the remaining respondent nos.2, 3 and 4 representing GDA.

34. The petitioner, which, by its description in the array of parties appears to be a private limited company, successfully bid for the commercial plot No.B.S.-02 on Ambedkar Road, Ghaziabad, which was allotted to it on 21.08.2012 pursuant to an auction of commercial properties by the GDA under the terms and conditions contained in the Prospectus & Application form for Allotment of Commercial Properties in various schemes of the GDA.

36. Challenge in the petition is to the orders dated 01.08.2019, 05.08.2019 and 30.10.2019 passed by the officials of GDA. The order dated 01.08.2019 contains the departmental comments pertaining to charging of infrastructure surcharge over the property in question which has received the assent of various officials of the GDA. The order dated 05.08.2019 is a letter from the GDA communicating the petitioner the demand for Rs.40,18,000/- payable within a month from the date of the letter towards infrastructure surcharge and other charges. The order dated 30.10.2019 is a communication to the petitioner that his representation dated 30.08.2019 for not recovering the infrastructure surcharge has been rejected.

37. The contention of the learned counsel for the petitioner is that with regard to the plot in question, a sale deed dated 06.06.2017 was executed which was a concluded contract and the entire demand including installments that were fixed by the GDA pursuant to the successful bid of the petitioner, had been duly deposited and no further dues remained. As such, the GDA is estopped from raising any demand for additional charge and, in view of the concluded contract, it would be deemed that they have waived their right to recover any cost other than what has been paid. Learned counsel contends that it was not a case where the GDA had erroneously computed the cost which would entitle it to demand infrastructure surcharge from the petitioner.

38. A perusal of the Prospectus and Application form that has been enclosed as Annexure-3 to the writ petition reveals the various conditions for the sale deed, some of which are being quoted below:-

6. Conditions of Sale Deed:

(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee.

.....

(vii) The purchaser shall be liable to pay municipal taxes, all other charges as per every description in respect of the plot whether assessed, charged or imposed on that plot or on the building constructed there on by government or any other local body.

(viii) Any money due to the GDA from the seller in respect of the plot shall be recoverable in respect of the plot shall be recoverable as arrears of the land revenue from the buyer besides other modes and rights of recovery.

.....

(xi) The water supply, sewarage, drainage and electricity lines as per specification and standard shall be provided

up to the boundary of the property by GDA. The internal work shall be completed by the bidder.

(xii) Plots will be allotted on "As is-Where is" basis and possession of plot will be given to allottee on "As is-where is" basis also. No objection will be entertained later.

....."

39. The sale deed has been enclosed as Annexure-6 to the writ petition which bears the signatures of the Director of the petitioner as well as the authorised signatory of the GDA. Clauses 8, 9 and 12 of the sale deed are as follows:-

"8. The vendee shall be liable to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed, charge or imposed on that plot or on the building construction.

9. Any money due to the GDA from the vendee of the aforesaid property, shall be recoverable as arrears of land revenue from the vendee or his nominee.

.....

12. The water supply, sewarage, Drainage and Electricity lines as per specification and standard shall be provided upto the boundary of the property by GDA. The internal work shall be completed by the vendee."

40. On the issue of promissory estoppel, the Supreme Court, in the case of **Vasantkumar Radhakisan Vora v. Board of Trustees of the Port of Bombay7,** observed as follows:-

"17. ..... The principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. The doctrine of promissory estoppel is now well established one in the field of administrative law. This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law.

.....

.....

If it can be shown by the government that having regard to the facts as they have transpired, it would be inequitable to hold the government or public authority to the promise or representation made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the government. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the government should be held bound by the promise made by it. But the government must be able to show that in view of the fact as have been transpired,

public interest would not be prejudiced. Where the government is required to carry out the promise the court would have to balance the public interest in the government's carrying out the promise made to the citizens, which helps citizens to act upon and alter his position and the public interest likely to suffer if the promises were required to be carried out by the government and determine which way the equity lies. It would not be enough just to say that the public interest requires that the government should not be compelled to carry out the promise or that the public interest would suffer if the government were required to honour it. In order to resist its liability the government would disclose to the court the various events insisting its claim to be exempt from liability and it would be for the court to decide whether those events are such as to render it equitable and to enforce the liability against the government. .....

18. It is equally settled law that the promissory estoppel cannot be used to compel the government or a public authority to carry out a representation or promise which is prohibited by law or which was devoid of the authority or power of the officer of the government or the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield place to the equity, if larger public interest so requires, and if it can be shown by the government or public authority, for having regard to the facts as they have transpired that it would be inequitable to hold the government or public authority to the promise or representation made by it. The court on satisfaction would not, in those circumstances raise the equity in favour of the persons to whom a promise or representation is made and enforce the promise or representation against government or the public authority. .....

19. Though executive necessity is not always a good defence, this doctrine cannot be extended to legislative acts or to acts prohibited by the statute.

20. When it seeks to relieve itself from its application the government or the public authority are bound to place before the court the material, the circumstances or grounds on which it seeks to resile from the promise made or obligation undertaken by insistence of enforcing the promise, how the public interest would be jeopardised as against the private interest. It is well settled legal proposition that the private interest would always yield place to the public interest. .. .."

41. The demand for imposition of infrastructure surcharge by the GDA has already been upheld in the leading writ petition above and as such the reasons are not reiterated here for the sake of brevity. Clause 8 of the sale deed evinces the liability of the petitioner to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed charge or imposed on that plot or on the building construction. Thus, the sale deed is subject to the provisions of clause 8 thereof and as such the petitioner cannot claim any estoppel against the GDA with regard to the demand for infrastructure surcharge etc. as evinced in the letter of demand dated 05.08.2019. The principle of promissory estoppel would not arise under the facts and circumstances of the case.

42. The issues raised by the petitioner in its representation dated 30.08.2019 were

considered by the GDA and the order dated 30.10.2019 was passed, which, in view of discussion hereinabove, is justified and calls for no interference.

43. Accordingly, the writ petition fails and is dismissed.

WRIT - C No. - 36234 of 2019
M/S Jain Sons Surgicals Pvt Ltd v. State of U.P. & others

44. Heard Shri Kshitij Shailendra, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the remaining respondent nos.2, 3 and 4 representing GDA.

45. The petitioner, which, by its description in the array of parties appears to be a private limited company, successfully bid for the commercial plot No.B.S.-04 on Ambedkar Road, Ghaziabad, which was allotted to it on 22.08.2012 pursuant to an auction of commercial properties by the GDA under the terms and conditions contained in the Prospectus & Application form for Allotment of Commercial Properties in various schemes of the GDA.

46. Challenge in the petition is to the orders dated 02.08.2019, 05.08.2019 and 30.10.2019 passed by the officials of GDA. The order dated 02.08.2019 contains the departmental comments pertaining to charging of infrastructure surcharge over the property in question which has received the assent of various officials of the GDA. The order dated 05.08.2019 is a letter from the GDA communicating the petitioner the demand for Rs.51,74,400/- payable within a month from the date of the letter towards infrastructure surcharge and other charges. The order dated 30.10.2019 is a communication to the petitioner that his representation dated 04.09.2019 for not recovering the infrastructure surcharge has been rejected.

47. The contention of the learned counsel for the petitioner is that with regard to the plot in question, a sale deed dated 17.11.2014 was executed which was a concluded contract and the entire demand including installments that were fixed by the GDA pursuant to the successful bid of the petitioner, had been duly deposited and no further dues remained. As such, the GDA is estopped from raising any demand for additional charge and, in view of concluded contract, it would be deemed that they have waived their right to recover any charge other than what has been paid. Learned counsel contends that it was not a case where the GDA had erroneously computed the cost which would entitle it to demand infrastructure surcharge from the petitioner.

48. A perusal of the Prospectus and Application form that has been enclosed as Annexure-3 to the writ petition reveals the various conditions for the sale deed, some of which are being quoted below:-

6. Conditions of Sale Deed:

(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee.

.....

(viii) Any money due to the GDA from the seller in respect of the plot shall be recoverable in respect of the plot shall be recoverable as arrears of the land revenue from the buyer besides other modes and rights of recovery.

.....

(xi) The water supply, sewarage, drainage and electricity lines as per specification and standard shall be provided up to the boundary of the property by GDA. The internal work shall be completed by the bidder.

(xii) Plots will be allotted on "As is-Where is" basis and possession of plot will be given to allottee on "As is-where is" basis also. No objection will be entertained later.

....."

49. The sale deed has been enclosed as Annexure-7 to the writ petition which bears the signatures of the Director of the petitioner as well as the authorised signatory of the GDA. Clauses 6, 7 and 10 of the sale deed are as follows:-

"6. The vendee shall be liable to pay rates, taxes, charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction.

7. Any money due to the GDA from the vendee of the aforesaid property, shall be recoverable as arrears of land revenue from the vendee or his nominee.

.....

10. The water supply, sewarage, Drainage and Electricity lines as per specification and standard shall be provided upto the boundary of the property by GDA. The internal work shall be completed by the vendee."

50. The demand for imposition of infrastructure surcharge by the GDA has already been upheld in the leading writ petition above and as such the reasons are not reiterated here for the sake of brevity. Clause 6 of the sale deed evinces the liability of the petitioner to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed charge or imposed on that plot or on the building construction. Thus, the sale deed is subject to the provisions of clause 6 thereof and the petitioner cannot claim any estoppel against the GDA with regard to the demand for infrastructure surcharge etc. as evinced in the letter of demand dated 05.08.2019. The issues raised by the petitioner in its representation dated 04.09.2019 were considered by the GDA and the order dated 30.10.2019 was passed, which, in view of discussion hereinabove, is justified. This case calls for no interference.

51. Accordingly, the writ petition fails and is dismissed.

WRIT - C No. - 40300 of 2019

Committee Of Management Nanki Seva Sansthan & Another vs. State Of U.P. & Ors.

Amendment Application No.4 of 2020

51. This amendment application was filed on 18.09.2020. However, this application has not been pressed by the learned counsel for the petitioners and, therefore, it is rejected.

Order on Writ Petition

52. Heard Shri Manmohan Singh, learned counsel for the petitioners and and Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the respondent nos.2, 3 and 4 The learned Standing Counsel represents the respondent no.1-State of U.P.

53. This writ petition has been filed, inter alia, with the following prayers:-

"A. Issue a writ, order or direction in the nature of certiorari quashing the impuged order dated 14.11.2019 and 20.11.2019 passed by the respondent No.4 and 3 respectively (Annexure No.7 & 8 to the writ petition)

B. Issue a writ, order or direction in the nature of MANDAMUS commanding and directing the respondent No.2 to forthwith sanction the map of school building submitted by the petitioner before him."

54. It is stated that the petitioner no.1 is a Society registered on 24.12.2001 under the Societies Registration Act. The contention of the learned counsel for the petitioners that pursuant to an advertisement of the GDA in the year 2007 regarding allotment of land in Swarn Jayantipuram Yojana in favour of the Societies for running educational institutions. The Society through its Manager applied for allotment on 04.08.2006 an an area of approximately 3055.50 sq. mts. in D-Block in Swarn Jayantipuram Scheme in the plot of land earmarked for primary school. A payment schedule of the installments was communicated to the petitioners and thereafter a lease-deed of the aforesaid plot of land admeasuring 3050.85 sq. mts. was executed on 30.06.2015 between the GDA as lessor and the petitioner-Society as lessee. It is stated that delivery of possession was given to the petitioner-Society on 30.09.2015. At the time of execution of the lease-deed, there was no outstanding dues against the petitioners. For completing constructions of the school building within the stipulated time as prescribed by the lease-deed, an application was submitted before the GDA for sanction of the map for school building. However, the respondent no.4 (Assistant Engineer, Master Plan Section, GDA) informed the petitioner-Society that an amount of Rs.10,47,052.00 is outstanding against the petitioner and without payment of the same, the map cannot be sanctioned. Further, on 20.11.2019 demand letter was issued by the GDA whereby an amount of Rs.8,72,543.00 was demanded as infrastructure surcharge. It is contended that at this stage, the GDA cannot demand any amount as infrastructure surcharge inasmuch as the entire installments, as fixed by the GDA, have been duly deposited and no dues are outstanding as is evinced in the lease-deed dated 30.06.2015.

55. Counter and rejoinder affidavits have been exchanged.

56. A perusal of the brochure of the GDA that has been appended as Annexure-1 to the writ petition reveals that a scheme was framed for registration of plots of land for educational institutions which included the rules for applications, and other terms. The eligibility criteria were that the educational institution had to be registered before the Registrar of the Society or as a Trust; that it had to be a recognised institution in accordance with the rules of the relevant authorised Educational Board. Moreover, those institutions would be given priority who had an experience of minimum of 3 three years (a minimum of two years for Nursery/Primary school). The financial condition of the applicant-Institution was necessarily to be sound. The scheme provided for payment of rates of allotment as well as lease rent. Clause 7 of the brochure provided for a lease-deed which is as follows:-

"7.0 पट्टा विलेख

7.1 संस्था को भूखंड 90 वर्ष की अवधि हेतु पटटे पर दिया जायेगा। संस्था द्वारा समस्त देय धनराशि जमा कराकर अंतिम किश्त की निर्धारित तिथि से तीन माह में निर्धारित प्रोफोर्मा पर अपने खर्चे पर पट्टा विलेख कराना होगा अन्यथा आवंटन / अनुबंध निरस्त कर दिया जायेगा।

7.2 आवंटित भूखंड के कुल प्रीमियम का 10 प्रतिशत लीज रेंट 90 वर्ष के लीज अवधि हेतु अग्रिम रूप से कब्ज़ा प्राप्त करते समय देय होगा।

7.3 पट्टा विलेख तैयार करने में स्टाम्प, रजिस्ट्री, लीज डीड एवं उसकी प्रति तथा अन्य सभी खर्चे आवंटी को स्वयं करने होँगे।"

57. Clause 9.4 restricted the transfer of the plots in question and is as follows:-

"9.4 भूखंड का हस्तांतरण अनुमन्य नहीं होगा और यदि प्रत्यक्ष या परीक्ष रूप से हस्तांतरण प्राधिकरण के संज्ञान में आता है तो नियम 10.10 और 10.12 के अनुसार हस्तांतरण शुल्क वसूल करने का प्राधिकरण को अधिकार होगा अन्यथा प्राधिकरण आवंटन / अनुबंध /पट्टा निरस्त कर भूखंड में पुनः प्रवेश कर लेगा।"

58. By the letter dated 24.06.2008, the GDA informed the petitioner-Society that the plot of land for Primary School situated at D-Block in Swarn Jayantipuram Scheme has been allotted to the petitioner-Society and specified the amounts that were required to be paid pertaining to the allotment rates.

59. By means of a registered lease-deed dated 30.06.2015, for a period of 90 years, the plot in question was leased to the petitioner-Society by the GDA. The terms of the lease-deed evince that the ownership of the property transferred would vest in the GDA which would have the right of resumption in case the terms of the lease-deed were flouted and on determination of the lease.

60. By means of the letter no.469/म० प्लान० अनु०/जोन-3/2019, dated 14.11.2019 (Annexure 7 to the writ petition) pertaining to the sanction of building plan of the plot in question, the GDA informed that an amount of Rs.10,47,052.00 is outstanding and only after its deposit, the no-objection to the building plan can be given.

61. By means of another letter no.2067/व्यव० अनु० /2019 dated 20.11.2019 (Annexure-8 to the writ petition), the

petitioner-Society was informed by the GDA that in terms of the Government Order No.152@9&vk&1&1998, dated 15.01.1998 (the First Government Order), infrastructure charge of Rs.8,72,543.00 is required to be paid within a period of one month.

62. In the two impugned orders dated 14.11.2019 and 20.11.2019, reference has been made by the GDA of the amounts allegedly due to the GDA by the petitioner Society and the relevant averments find place in paragraphs 17, 18 and 25 of the writ petition which are as follows:-

"17. That after receiving the aforesaid application of petitioner society, respondent No.4 wrote letter dated 14.11.2019 to the petitioner, whereby informed that as per Business Section, against the said plot there is about Rs.10,47,052/00 are outstanding dues and without payment of the same map cannot be sanctioned. Copy of the letter dated 14.11.2019 is annexed herewith and marked as Annexure No.7 to this writ petition.

18. That petitioner also received a demand letter dated 20.11.2019 issued from the respondent No.3, whereby he has arbitrarily and illegality directed the petitioner to deposit Rs.8,72,543./00 as infrastructure fee. Copy of the demand letter dated 20.11.2019 issued from the respondent No.3 is annexed herewith and marked as Annexure No.8 to this writ petition.

.....

25. That it is respectfully submitting before this Hon'ble Court that after receiving the letter dated 14.11.2019 and 20.11.2019, manager of the Society regularly approaching the respondents and requesting to recall the illegal demand notice of infrastructure fee and also forthwith sanction the map of school, whereby he can construct the building of school within time, but till date no action has been taken by the respondents. It is respectfully submitted before this Hon'ble Court that if development authority does not sanctioned the map earliest then petitioner society will suffer irreparable loss and injury."

63. In the counter affidavit filed on behalf of the GDA, reply to these paragraphs of the writ petition are give in paragraph 22 and 26 and the same are as follows:-

"22. That, the contents of paragraph Nos.17 and 18 of the writ petition need no reply. It is relevant to be submitted before this Hon'ble Court that prior to sanction of building-plan, the Master Plan Section of the Ghaziabad Development Authority had sought for No-Objection from the concerned Section whereupon it was informed that 10% of the total value of the plot in question towards infrastructure surcharge has not been deposited by the petitioners' Institution and as such the necessary intimation was sent to the petitioners requiring them to deposit the same.

It is further submitted that the local audit of the year 2013-14 was duly conducted by the Local Fund Audit/Comptroller and Auditor General (C.A.G.) wherein in as many as 24 matters objections were raised regarding non compliance of Clause 5 (Chha) of the Government Order No.152/9-Aa-1/1998 dated 15.1.1998 Residential Section with regard to charging of 10% of the total value

of the plot towards infrastructure surcharge, but since the said 10% amount was not charged hence the Government has suffered with substantial revenue loss. In pursuance of the objection raised by the Audit department, a meeting was held in the office of the Principal Secretary (Housing) State of U.P. wherein directions were issued that in respect to the properties which had been allotted in between the Government Orders dated 15.1.1998 and the Government Order dated 26.7.2018 the notices may be issued for recovery of infrastructure surcharge from the concerned allottees. In pursuance of the aforesaid as well as the direction issued by the State Government for recovery of amount towards infrastructure surcharge, which was not charged by the Ghaziabad Development Authority on account of inadvertence, the same is being charged/demanded by means of letter dated 20.11.2019. The petitioner was required to deposit the amount of infrastructure surcharge in pursuance of the Government Order dated 15.1.1998 but since the same could not be demanded earlier on account of inadvertence hence the demand-letter has been issued to the petitioner which, being perfectly justifiable in the facts and circumstances of the case, requires no interference whatsoever of this Hon'ble Court.

That, it is further relevant to be submitted before this Hon'ble Court that the petitioner has not challenged the relevant clause of the Government Order dated 15.1.1998 which authorizes the Development Authorities to levy the infrastructure surcharge on the properties which had been allotted in between the Government Order dated 15.1.1998 and the Government Order dated 26.7.2018 and as such at this stage the petitioner cannot question the demand-letter issued by the respondent Authority in pursuance of the aforesaid Government Order dated 15.1.1998 and thus the writ petition is liable to be dismissed.

.....

26. That, the contents of paragraphs No.25 of the writ petition are wholly misconceived in the light of the facts mentioned in the preceding paragraphs and are emphatically denied. In reply thereto it may further be submitted before this Hon'ble Court that the surcharge/infrastructure surcharge is being demanded from the petitioner in pursuance of the audit-objection and the Government Order dated 15.1.1998."

64. Therefore, the GDA is not disputing that the amount of Rs.10,47,052.00 stated to be outstanding in the order dated 14.11.2019 and the amount of Rs.8,72,543.00 demanded in the order dated 20.11.2019 both pertain to the imposition of infrastructure surcharge over the property in question in terms of the First Government Order, though, the monetary values of the claim of the GDA in the aforesaid two letters differ.

65. A perusal of the lease-deed reveals that with regard to the allotted land, an amount of Rs.95,18,652.00 as premium and Rs.1,04,70,518.00 towards lease rent has been paid by the petitioner-Society to the GDA which has been duly acknowledged by the GDA.

66 As far as the demand of infrastructure surcharge raised in the impugned orders issued by the GDA to the petitioner-Society is concerned, the First Government Order needs to be referred to.

Clause 5(छ) of the First Government Order is the provision enabling the GDA and other Development Authorities to impose 10% surcharge in respect of plots of land sold by the Development Authorities. Clause 5(छ) is being quoted again as follows:-

" (छ) विकास प्राधिकरण द्वारा बेचे जा रहे भूखण्डों के मूल्य पर 10 प्रतिशत अधिभार लगाते हुए प्राप्त होने वाली अतिरिक्त आय की शत–प्रतिशत अंश।"

67. As mentioned above, the document transferring the property in question in favour of the petitioner Society is a lease-deed and not a deed of sale. Sale of immoveable property is governed by the provisions of Chapter III of the Transfer of Property Act, 1882. Section 54 defines 'sale' as follows:-

"54. "Sale" defined.- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

68. Lease of immoveable property is governed by Chapter V of the Transfer of Property Act. Section 105 speaks as follows:-

"105. Lease defined.--A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.--The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."

69. The terms of the lease-deed dated 30.06.2015, which have been mentioned above, leave no room for doubt that the transfer of the property in question is not one of transfer of ownership but is a transfer of a right to enjoy such property made for a period of 90 years on payment of premium and rent.

70. The nature and contents of the lease-deed dated 30.06.2015 being that of lease are not governed by the provisions of the First Government Order inasmuch as that Government Order applies only to such plots of land **sold** by the Development Authorities which is not the case in the present case.

71. Thus, the claim of the GDA of infrastructure surcharge on the property in question pursuant to the First Government Order is dehors the entitlement of the GDA under the First Government Order. The demand for infrastructure surcharge from the petitioner Society does not have the mandate of law and as such is illegal. Accordingly, the impugned letters /orders dated 14.11.2019 and 20.11.2019 claiming infrastructure surcharge are quashed. The GDA shall not require the petitioners to deposit the infrastructure surcharge for sanction of the map. However, other conditions of sanction would apply.

72.The writ petition is, accordingly, allowed.

WRIT - C No. - 3490 of 2020

M/S Airon Buildcon Private Limited vs. State Of U.P. And 3 Others

73. Heard Shri Sumit Daga, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the respondent nos.2, 3 and 4 representing GDA.

74. The petitioner appears to be a private limited company, which successfully applied for allotment of commercial plot under a scheme of the GDA for allotment of residential/ commercial properties by auction.

75. It is contended that the area of plot was initially 481 square meters and the total cost was Rs.2,23,66,500.00. The petitioner was also asked to deposit 12% of the entire bid value as lease rent and a sum of Rs.26,83,980.00 as freehold charges prior to execution of a registered deed. However, the actual area of the plot was reduced by 106.00 sq. mts. and the total area of the plot conveyed was 375.00 sq. mts., the total premium of the plot being Rs.1,74,37,500.00 with 12% lease rent and freehold charge of Rs.20,92,500.00 totaling a sum of Rs.1,95,30,000.00. It is submitted that after deposit of all the dues demanded by the GDA, a sale deed dated 06.01.2018 was executed between the GDA and the petitioner.

76. It is contended that by the impugned order dated 05.08.2019, 10% corner charge and 10% infrastructure charge is sought to be recovered amounting to Rs.41,01,300.00. By the other impugned order dated 17.09.2019, the petitioner has been informed that the amount of corner charge and infrastructure charge is liable to be paid by the petitioner along with interest. In that impugned order, as far as the infrastructure charge is concerned, the GDA has referred to the First Government Order in support of its demand.

77. The petitioner has stated that the conduct of the GDA is hit by the principles of estoppel and waiver and the amount cannot be recovered, particularly in view of the concluded contract of sale deed dated 06.01.2018.

78. No counter affidavit appears on record of this case despite the order dated 06.02.2020 passed by this Court.

79. The brochure that has been appended as Annexure-2 to the writ petition reveals the conditions of the sale deed. Clause 6(ii) of the brochure is as follows:-

"(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee."

80. The sale deed dated 06.01.2018 provides the terms of agreement between the parties. Clause 5 is as follows:-

"5. That the vendee shall be liable to pay rates, taxes, charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction."

81. The sale deed is in the nature of an agreement signed by the Director of the petitioner company as well as the authorised signatory of the GDA. It has not

been disputed by the petitioner that the allotted plot no. S-1 situate at I-Block, Convenient Shopping, Kavinagar, Ghaziabad is a corner plot. The same is also reflected in the site plan that forms part of the sale deed dated 06.01.2018. In view of the detailed discussion in the leading writ petition, the demand for 10% infrastructure surcharge and 10% corner charge by the GDA cannot be faulted.

82. As such, the impugned orders dated 05.08.2019 and 17.09.2019 are justified and call for no interference.

83. This writ petition is, accordingly, dismissed.

WRIT - C No. - 3608 of 2020

M/S Treveni Aadarika Construction And Projects Company Pvt. Ltd. vs. State Of U.P. And 3 Others

84. Heard Shri Sumit Daga, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the respondent nos.2, 3 and 4 representing GDA.

85. The petitioner appears to be a private limited company, which successfully applied for allotment of commercial plot No.S-2, I-Block, Kavi Nagar, Ghaziabad under a scheme of the GDA for allotment of residential/commercial properties by auction.

86. It is contended that the area of plot allotted was 481 square meters and the total cost was Rs.2,23,66,500.00. The petitioner was also asked to deposit 12% of the entire bid value as lease rent and a sum of Rs.26,83,980.00 as freehold charges prior to execution of a registered deed. However, in the agreement to sell dated 13.02.2013 executed by the GDA and the petitioner, the actual area of the plot was reduced to 375.00 square meters, the total premium of the plot being Rs.1,74,37,500.00. Clause 6 of conditions of sale in the agreement to sell is as under:-

"6. That the Second Party shall be liable to pay rates, taxes, charges and assessment of every description in respect of apportioned plot/building whether assessed, charged or imposed on that plot or on the building construction."

87. Prior to the agreement to sell, the petitioner had paid a total amount of Rs.64,51,875.00. The balance amount of 75% was to be paid in installments. Thereafter, a sale deed pertaining to the land in question was executed between the GDA and the petitioner on 02.04.2014 which acknowledged the payment of the entire premium including lease rent and freehold charges. However, in this case, the terms of the sale deed are as follows:-

"1. That the Free Hold Convenient Shopping Plot No.S-2, I Block, Kavi Nagar, Ghaziabad measuring area 375.00 sq. mtr. is free from all charges, liens and encumbrances and being transferred to the vendee through this deed.

2. That Possession of the Convenient Shopping Plot in question has already been delivered to the vendee after the execution of the agreement to sale.

3. If the compensation of the land in question is increased by the decision of the court of law, the vendee agree to pay the proportionate amount of compensation to the vendor.

4. The vendee has paid Stamp duty on the total premium of land and building including lease rent and free hold charges in the above said sale agreement, now this document is being executed as per the rules.

5. The Plot and building thereon shall be used for Convenient Shopping Plot as per approved plan and building bye-laws.

6. The water supply, sewerage, Drainage and Electricity lines as per specification and standard shall be provided upto the boundary of the property by vendor at his cost. The vendee shall complete the internal work.

7. The Plot and building thereon shall not be used for any purpose other than specified in the agreement/sale deed executed by the vendor.

8. Details of Free Hold Convenient Shopping Plot Nos.S-2, I-Block, Kavi Nagar, Ghaziabad measuring 375.00 sq. mtr. Boundaries of which are given below:-

NORTH : 9.00 Metre Wide Road

SOUTH : 3.85 Wide Service Road (Existing)

EAST : Plot No.S-01

WEST : 40'.00 Wide Road"

88. Though there is no condition in the sale deed that the GDA can recover any other taxes, charges and assessment whether assessed, charged or imposed on that plot but, it is a settled principle of law that no estoppel would operate against a statute. Private interest would have to give way to public interest. As held in the leading writ petition, the imposition of 10% corner charge is referable to the allotment rules of the GDA and, the imposition of 10% infrastructure surcharge is permissible under the First Government Order that has been issued pursuant to the powers conferred upon the GDA and the State Government under Chapter VI of the Act of 1973. As such, the GDA is entitled to impose 10% infrastructure surcharge and 10% corner charge as evinced in the two impugned orders.

89. As such, the challenge to the aforesaid impugned orders fails and the writ petition is, accordingly, dismissed.

WRIT - C No. - 3611 of 2020

Pradeep Kumar Khanna And 4 Others vs.State Of U.P. And 3 Others

90. Heard Shri Kshitij Shailendra, learned counsel for the petitioners and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the remaining respondent nos.2, 3 and 4 representing GDA.

91. Challenge in the petition is to the orders dated 02.08.2019, 05.08.2019 and 30.10.2019 passed by the officials of GDA. The order dated 02.08.2019 contains the

departmental comments pertaining to charging of infrastructure surcharge over the property in question which has received the assent of various officials of the GDA. The order dated 05.08.2019 is a letter from the GDA communicating the petitioners the demand for Rs.50,73,600/- payable within a month from the date of the letter towards infrastructure surcharge and other charges. The order dated 30.10.2019 is a communication to the petitioners that their representation dated 04.09.2019 for not recovering the infrastructure surcharge has been rejected.

92. The contention of the learned counsel for the petitioners is that commercial plot No. B.S. - 6, Ambedkar Road, Opposite Bikaner Sweets, Ghaziabad measuring 200.00 square meters was sold by the GDA to Rakesh Agarwal and Ritu Agarwal by means of a registered sale-deed dated 01.05.2015. Thereafter, a sale deed, which was registered on 20.05.2015, was executed by the aforesaid Rakesh Agarwal and Ritu Agarwal transferring the property in question to the petitioners which was a concluded contract and the entire demand including installments that were fixed by the GDA pursuant to the successful bid had been duly deposited and no further dues remained. As such, the GDA is estopped from raising any demand for additional charge and it would be deemed that they have waived their right to recover any charge other than what has been paid. Learned counsel contends that it was not a case where the GDA had erroneously computed the cost which would entitle it to demand infrastructure surcharge from the petitioner. It is further contended that it was not open for the GDA to demand any infrastructure charge from the petitioners pursuant to the sale deed executed by the original allottees in their favour.

93. It appears from the record that GDA published a Prospectus and Application form for allotment of commercial properties by auction in various schemes of the GDA (brochure). One Rakesh Agarwal, who is not a party in the present writ petition, was allotted the plot in question. The entire amount of premium and 12% lease rent and freehold charges amounting to Rs.5,07,36,000.00 was deposited by the aforesaid Rakesh Agarwal pursuant to which a sale deed dated 01.05.2015 was executed by the GDA through its Joint Secretary/Authorised Signatory in capacity of vendor and Shri Rakesh Agarwal and Smt. Ritu Agarwal as vendees. Clause 6 of the sale deed is as follows:-

"6. The vendee shall be liable to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed, charge or imposed on that plot or on the building construction."

94. Relevant conditions of sale deed have been mentioned in the brochure and Clause 6(ii) and (vii) are as follows:-

"(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee.

.....

(vii) The purchaser shall be liable to pay municipal taxes, all other charges as per every description in respect of the plot whether assessed, charged or imposed on that plot or on the building constructed

there on by government or any other local body."

95. The terms of Clauses 6(ii) and (vii) of the conditions of sale deed mentioned in the brochure also the terms of the sale deed dated 01.05.2015 were binding on the vendees. The vendees, namely Rakesh Kumar Agarwal and Ritu Agarwal, transferred the plot in question to the petitioners by executing a sale deed registered on 20.05.2015.

96. The sale deed dated 01.05.2015 evinces that the vendees mentioned therein includes their heirs and successors, executors, administrators and permitted assignees. The petitioners, therefore, would be bound under the terms and conditions of the sale deed dated 01.05.2015.

97. In view of the imposition of infrastructure surcharge by the GDA being upheld in the leading writ petition for the reasons given therein, the demand raised by the GDA is justified and calls no interference.

98 The writ petition, thus, fails and is dismissed.

WRIT - C No. - 3614 of 2020

Vipul Garg And Another vs. State Of U.P. And 3 Others

99. Heard Shri Kshitij Shailendra, learned counsel for the petitioners and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the remaining respondent nos.2, 3 and 4 representing GDA.

100. Challenge in the petition is to the orders dated 01.08.2019, 05.08.2019 and 30.10.2019 passed by the officials of GDA. The order dated 01.08.2019 contains the departmental comments pertaining to charging of infrastructure surcharge over the property in question which has received the assent of various officials of the GDA. The order dated 05.08.2019 is a letter from the GDA communicating the petitioners the demand for Rs.46,06,000/- payable within a month from the date of the letter towards infrastructure surcharge and other charges. The order dated 30.10.2019 is a communication to the petitioners that their representation dated 30.08.2019 for not recovering the infrastructure surcharge has been rejected.

101. The contention of the learned counsel for the petitioners is that with regard to the plot No.BS-03 situated at Ambedkar Road, Opposite Bikaner Sweets, Ghaziabad measuring 175 square meters, a sale deed dated 03.07.2013 was executed between the GDA and them which is a concluded contract and the entire demand including installments that were fixed by the GDA pursuant to the successful bid of the petitioners, had been duly deposited and no further dues remain. As such, the GDA is estopped from raising any demand for additional charge and, in view of concluded contract, it would be deemed that they have waived their right to recover any charge other than what has been paid. Learned counsel contends that it was not a case where the GDA had erroneously computed the cost which would entitle it to demand infrastructure surcharge from the petitioners.

102. Despite time being granted to the respondents to file a counter affidavit by

means of the order dated 10.02.2020, no counter affidavit has been filed.

103. A perusal of the Prospectus and Application form that has been enclosed as Annexure-3 to the writ petition reveals the various conditions for the sale deed, some of which are being quoted below:-

6. Conditions of Sale Deed:

(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee.

.....

(vii) The purchaser shall be liable to pay municipal taxes, all other charges as per every description in respect of the plot whether assessed, charged or imposed on that plot or on the building constructed there on by government or any other local body. "

104. The sale deed has been enclosed as Annexure-7 to the writ petition which bears the signatures of the petitioners as well as the authorised signatory of the GDA. Clause 6 of the sale deed is as follows:-

"6. The vendee shall be liable to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed, charge or imposed on that plot or on the building construction."

105. The demand for imposition of infrastructure surcharge by the GDA has already been upheld in the leading writ petition above and as such the reasons are not reiterated here. Clause 6 of the sale deed evinces the liability of the petitioner to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed charge or imposed on that plot or on the building construction. Thus, the sale deed is subject to the provisions of clause 6 thereof and as such, the petitioner cannot claim any estoppel against the GDA with regard to the demand for infrastructure surcharge etc. as evinced in the letter of demand dated 05.08.2019. The issues raised by the petitioners in their representation dated 30.08.2019 were considered by the GDA and the order dated 30.10.2019 was passed. In view of discussion hereinabove, the demand raised by the GDA in the orders impugned is justified and calls for no interference.

106. Accordingly, the writ petition fails and is dismissed.

WRIT - C No. - 5300 of 2020

M/S Express Properties Private Limited vs. State Of U.P. & 2 Ors.

107. Heard Shri Pankaj Srivastava, learned counsel for the petitioner and the learned Standing Counsel appearing for the respondent no.1-State of U.P. as well as Shri M.C. Chaturvedi, learned Senior Advocate assisted by Shri M.N. Singh, learned counsel appearing for the remaining respondent nos.2 and 3 representing GDA.

108. This writ petition has been filed, inter alia, with the following prayers:-

"(i) issue a writ, order of direction in the nature of CERTIORARI quashing the impugned orders dated 16.12.2019 and 24.12.2019 passed by the respondent no.3

(Annexure No.11 & 12 to this writ petition).

(ii) issue a writ, order or direction in the nature of MANDAMUS directing the respondents to forthwith release the 'building completion certificate' in respect of remaining Towers D, E & F of the plot in question in favour of the petitioner and not to block any application/documents in view of this recovery.

(iii) issue a writ, order or direction in the nature of MANDAMUS directing the respondents not to adopt any coercive measure to recover Rs.2,60,40,168/- (Rupees 2.60 crores) from the petitioner."

109. By means of the impugned orders, 16.12.2019 and 24.12.2019, infrastructure surcharge of an amount of Rs.2,60,40,168.00 has been demanded from the petitioner which appears to be a Company. In the order dated 24.12.2019, the GDA has asked the petitioner to deposit the said amount so that further proceedings as per rules can be taken for issuance of completion certificate.

110. Despite time granted by this Court on 13.02.2020, no counter affidavits have been filed.

111. It is the contention of the learned counsel for the petitioner that pursuant to the sale deed dated 22.01.2007, Plot No.1/1 Vaishali Sector-1, Vaishali Scheme, Ghaziabad having an area of 18385.03 sq. mts. was transferred after payment of the entire amount of premium and freehold charges as well as lease rent. Another sale deed was executed between the GDA and the petitioner on 02.07.2010 with regard to an additional adjoining area of land admeasuring 5099.97 sq. mts. for which the entire amount of premium and lease rent was deposited by the petitioner. A letter dated 20.06.2016 was issued stating that till that date no amount was outstanding against that plot. The contention is that all the terms and conditions of the brochure pertaining to the land in question have been complied with by the petitioner and the entire amount demanded from the petitioner was deposited pursuant to which the aforesaid sale deeds were executed, but the petitioner is now being directed to pay the amount of infrastructure surcharge which is baseless and the completion certificate of Towers D, E and F is not being issued. As a result, the petitioner cannot deliver the flats to the buyers who have already paid the amount. It is contended that majority of the property in question has been sold by the petitioner and now it cannot demand any additional amount from any of the flat owners. It is further contended that the impugned orders are illegal and the demand is barred by principle of promissory estoppel.

112. A perusal of the brochure pertaining to the terms and conditions of the allotment by auction of group housing plot on freehold basis in the Vaishali Scheme that has been enclosed in the writ petition reveals that Clause 4(ii) and (vii) provide as follows:-

"4. Execution of Sale Deed and Free Hold Rights:

.....

(ii) The aforesaid property shall be held by the bidder as the allottee of the Ghaziabad Development Authority on the same terms and conditions prescribed by the Authority as contained in the sale deed to be executed by the bidder allottee.

.....

(vii) The bidder or his allottee shall be liable to pay rates, taxes, charges and assessment of every description in respect of the apportioned plot/building whether assessed, charge or imposed on that plot or on the building construction."

113. It appears from the record that a sale deed dated 22.01.2007 was executed between the GDA and the petitioner through their authorised representatives in respect of the plot in question. Clause 8 of the terms and conditions of the sale deed is as follows:-

"8. यह कि क्रेता समय समय पर गाजियाबाद विकास प्राधिकरण बोर्ड एवं शासनादेश द्वारा जारी किये गये नियमोँ विनियमोँ एवं प्रविधानो का पालन करता रहेगा।"

114. Thereafter, a supplementary sale deed was executed between the GDA and the petitioner on 02.07.2010 for an additional area of land admeasuring 5099.97 sq. mts. for which the entire amount was deposited by the petitioner. Clause 8 of the supplementary sale deed is as follows:-

"8. यह कि क्रेता समय समय पर गाजियाबाद विकास प्राधिकरण बोर्ड एवं शासनादेश द्वारा जारी किये गये नियमोँ विनियमोँ एवं प्रविधानो का पालन करता रहेगा।"

115. The demand for imposition of infrastructure surcharge by the GDA has already been upheld in the leading writ petition above and as such the reasons are not reiterated here for the sake of brevity. The relevant clauses of the sale deeds bind the petitioner to the various Government Orders, bye-laws etc. of the GDA as in force. The petitioner cannot claim any estoppel against the GDA with regard to the demand for infrastructure surcharge as the same is being demanded pursuant to the First Government Order.

116. In view of the discussion hereinabove, the demand for infrastructure surcharge from the petitioner, by means of the impugned orders, is justified.

117. Accordingly, the writ petition is dismissed.

(2022)02ILR A795
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.12.2021

BEFORE

THE HON'BLE NEERAJ TIWARI, J.

Writ C No. 5031 of 2014

Mahipal ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Manu Saxena

Counsel for the Respondents:
C.S.C., Smt. Archana Tyagi, Sri Pankaj Tyagi

A. Essential Commodity – Fair Price Shop licence – Cancellation – Complaint by the persons, who were not the card-holder – Locus standi of complainant – No finding recorded in the impugned order – Effect – Held, once the complainants are not found the card holders of the petitioner's shop, they cannot be treated as aggrieved person – In the light of the settled law, this Court is of the firm view that only