IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4828 OF 2022

PETITIONER : Radha Madhav Developers, Through its Partner, Mr.Rajesh Navranglal Agarwal, Aged about 52 years, Occu.: Business, R/o Navrang, Vrindavan, Jamtha, Nagpur-441122.
Having registered office at - 7th Floor, B-Wing, Devki, Vrindavan, Jamtha, Nagpur-441122.

-Versus-

RESPONDENTS :

1. State of Maharashtra, Through its Secretary, Urban Development Department, Mantralaya, Mumbai-32.

2. Nagpur Metropolitan Regional Development Authority, Through its Commissioner, Station Road, Sadar, Nagpur-01.

3. Commissioner, Nagpur Metropolitan Regional Development Authority, Station Road, Sadar, Nagpur-01.

Mr.Madhur Deo, Advocate for the petitioner
Mr.N. R. Patil, AGP for the respondent-State.
Mr.Girish A. Kunte, Advocate for respondent Nos.2 & 3.

WRIT PETITION NO. 1890 OF 2023

PETITIONER : Radha Madhav Developers, Through its Partner, Mr.Rajesh Navranglal Agarwal, Aged about 52 years, Occu.: Business, R/o Navrang, Vrindavan, Jamtha, Nagpur-441122.
Having registered office at - 7th Floor, B-Wing, Devki, Vrindavan, Jamtha, Nagpur-441122.

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1. State of Maharashtra, Through its Secretary, Urban Development Department, Mantralaya, Mumbai-32.

2. Nagpur Metropolitan Regional Development Authority, Through its Commissioner, Station Road, Sadar, Nagpur-01.

3. Commissioner, Nagpur Metropolitan Regional Development Authority, Station Road, Sadar, Nagpur-01.

Mr.Madhur Deo, Advocate for the petitioner
Mr.N. R. Patil, AGP for the respondent-State.
Mr.Girish A. Kunte, Advocate for respondent Nos.2 & 3.

WRIT PETITION NO. 5386 OF 2022

PETITIONER : Radha Madhav Developers, Through its Partner, Mr.Rajesh Navranglal Agarwal, Aged about 52 years, Occu.: Business, R/o Navrang, Vrindavan, Jamtha, Nagpur-441122.
Having registered office at - 7th Floor, B-Wing, Devki, Vrindavan, Jamtha, Nagpur-441122.

-**Versus**-

RESPONDENTS :

1. State of Maharashtra, Through its Secretary, Urban Development Department, Mantralaya, Mumbai-32.

2. Nagpur Metropolitan Regional Development Authority, Through its Commissioner, Station Road, Sadar, Nagpur-01.

3. Commissioner, Nagpur Metropolitan Regional Development Authority, Station Road, Sadar, Nagpur-01.

Mr.Madhur Deo, Advocate for the petitioner
Mr.N. R. Patil, AGP for the respondent-State.
Mr.Girish A. Kunte, Advocate for respondent Nos.2 & 3.

CORAM: SMT. M. S. JAWALKAR &
PRAVIN S. PATIL, JJ.

CLOSED ON : 6TH AUGUST, 2025
PRONOUNCED ON: 15TH SEPTEMBER, 2025

J U D G M E N T (Per : Smt. M. S. Jawalkar, J.)

Heard the learned counsel for the parties.

2. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

3. Since similar issue is involved in these petitions, the same are decided by this common judgment.

4. By these petitions, the petitioner seeks declaration that levy of infrastructure cost by the respondent No.2 in pursuance of Sanction Modification in final development plan prepared by respondent No.2 is violative of Articles 14 and 265 of the Constitution of India and is also *de hors* the provisions of Maharashtra Regional Town Planning Act, 1966. The petitioner also seeks declaration that the chart uploaded on the website of respondent No.2, which lays down the rate at which the infrastructure cost is to be imposed with effect from 01/01/2021 is bad in the eyes of law and is required to be struck down. The petitioner also seeks quashing and setting aside demand to the extent that it levies infrastructure development cost and STP charges.

5. The petitioner is a developer and owned agricultural land

bearing Survey Nos.Nos.248, 257/2, 258/2, 258/1G and 258/1K (in Writ Petition Nos.4828/2022 and 1890/2023) and Survey Nos.246/Part 1, 246/Part 3, 253 (Writ Petition No.5386/2022), all surveys situated at Mouza Jamtha, Nagpur (Rural).

6. The main contention of the petitioner is that on 18/06/2012, agreement came to be executed between Nagpur Improvement Trust (for short “NIT”) and the petitioner. As per that agreement, the petitioner was permitted to develop the said property as per the layout plan sanctioned by the NIT. The petitioner was put under an obligation to provide all the amenities at the said property at its own cost. Therefore, there is no question of any development cost or infrastructure cost as demanded by the Nagpur Metropolitan Region Development Authority (for short “NMRDA”). In the year 2015, the NIT prepared a draft development plan for Nagpur Metropolitan Area. As per the said draft development plan, the residential zone (hereinafter referred to as ‘RZ’ for the sake of brevity) was further subdivided into four zones i.e. RZ-1, RZ-2, RZ-3 and RZ-4. The RZ-1 was granted FSI (Floor Space Index) of 1.25, RZ-2 was granted FSI of 2, RZ-3 was granted FSI of 0.75 and RZ-4 was granted FSI of 0.5. As per the draft development plan, the said property was categorized as RZ-4. Earlier, the FSI of 1.1 was prescribed for RZ-4. It

was informed by the NIT that by virtue of saving clause 1.4, the petitioner was permitted to consume FSI, which was allowed to be used before the draft development plan was prepared. Vide demand letter dated 19/08/2019, the respondent No.2 has demanded a sum of Rs.54,90,258/- towards the infrastructure cost. The petitioner raised objection dated 12/09/2019, raising protest against the imposition of infrastructure cost. Its request/representation came to be rejected on 09/04/2021. It was informed by the Assistant Engineer, NMRDA vide communication dated 20/11/2019 that infrastructure cost is levied as per the provisions of law and was necessary to levy such infrastructure costs. It is contention of the petitioner that levy of infrastructure cost is illegal and is without any authority of law. It is further contention that one of the most important components of taxes is rate of tax at which the same is imposed. In the present matter, there is no rate prescribed for levy of infrastructure cost. There is fundamental defect in levy of infrastructure cost. Even if it is assumed that it is a fee, it is well settled law that in cases where fee is levied, there has to be corresponding service which needs to be provided as a quid pro quo. In the present case there is nothing on record to indicate that there is corresponding service, which has been provided by respondent No.2. In the present case, the infrastructure and all amenities on the layout is provided by the petitioner. Therefore, demand of infrastructure cost is illegal. It is further contention that levy of infrastructure cost amounts to double taxation. The petitioner has already been demanded an amount of Rs.11,00,041/- towards the land development fund for the fund created under section 124-J of the Act, which was already paid. Accordingly, prayer for holding and declaring that levy of infrastructure cost by the respondent No.2 in pursuance of sanction modification in sanction draft development plan prepared by the respondent No.2 is violative of Articles 14 and 265 of the Constitution of India and *de hors* the provisions of Maharashtra Regional and Town Planning Act.

7. In Writ Petition No.4828/2022, the petitioner has obtained Building Permit dated 02/04/2013, which pertains to Plot No.7. On 14/07/2014, the petitioner applied for revision of the building permit. Thereafter on 08/03/2019, the petitioner moved application to the respondent No.2 for revision of the building permit. The respondent No.2 on 19/08/2019 issued a demand of Rs.84,11,278/-, out of which a sum of Rs.54,90,258/- was towards the infrastructure cost. Hence, the petitioner is aggrieved by imposition of infrastructure cost.

8. In Writ Petition No.1890/2023, the petitioner has obtained

Building Permit, which pertains to Plot No.5. The petitioner applied for revision of the building permit and the building permit was revised in the years 2013, 2014 and finally in the year 2018. Thereafter on 31/03/2021, the petitioner moved application to the respondent No.2 for revision of the building permit. In response to the said application, the respondent No.2 on 29/09/2022 issued a demand of Rs.94,08,297/- out of which a sum of Rs.73,24,095/- was towards the infrastructure cost and Rs.9,34,100/- was towards STP charges. Hence, the petitioner is aggrieved by imposition of infrastructure cost and STP charges.

9. In Writ Petition No.5386/2022, the petitioner moved an application to the respondent No.2 seeking revision of the layout permit. In response to the said application, the respondent No.2 issued a demand of Rs.6,97,89,600/- towards infrastructure cost. Therefore, the petitioner is aggrieved by the imposition of infrastructure cost.

10. In support of the case, the learned counsel for the petitioner relied on the following citations:

(i) **Amit Maru & anr. vs State of Maharashtra & anr., 2010 (4) Bom. C.R. 568 (Paras-38, 39, 40, 41, 43, 45, 46 & 49),**

(ii) **Buildarch, Mumbai & anr. v. Municipal Corporation of Greater Mumbai & oths., 2010(5) Mh.L.J. 327 (Paras-1, 17, 19),**

(iii) **Solapur Promoters & Builders Association Society & anr. v. State of Maharashtra & oths., 2005(4) Mh.L.J. 445 (Para-7)**,

(iv) **J. Jayalalitha & oths v. State of Karnataka & oths., (2014) 2 SCC 401 (Para-34)**,

(v) **Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla & oths., (1992) 3 SCC 285 (Paras-7, 8),**

(vi) **CIT v. Mcdowell & Co.Ltd. (2009) 10 SCC 755 (Para-21)**

(vii) **Tata Iron & Steel Co.Ltd. v. State of Bihar, (2018) 12 SCC 107 (Para-20)**

(viii) **Ramon Distilleries Ltd, v. State Of Maharashtra, 2023 (1) Mh.L.J. (Paras-7, 10),**

(ix) **Bilt Graphic Paper Products Ltd.v. State of Maharashtra, 2023(3) Mh.L.J. 130 (Para-18),**

(x) **Sunil Bhupendradeo Thapar v. State of Maharashtra, 2023(3) Mh.L.J. 683 (Paras-22, 32, 23),**

(xi) **Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial & Investment Corpn., 2021 SCC OnLine 960 (Para-32).**

(xii) **Smt. Sharayu Ashok Gokhale and others v. The Nagpur Municipal Corporation, Nagpur and others (Writ Petition N. 994/2011) (Decision Dated 05/08/2022).**

11. The respondent Nos.2 and 3 submitted that as the petitioner approached the office of NMRDA with a revised plan of the earlier building permit issued on 03/04/2013, therefore, the demand note for infrastructure charges issued to the petitioner vide demand note dated 20/08/2019 is just and proper. In revised plan, it is proposed that built up area would be about 20686.970 sq.mtrs. Accordingly, the demand note issued by the respondents is just and

proper. The infrastructure cost is not for internal development of the layout, but it is for outer development for the purpose of construction of road, other services in order to provide outer facilities to the developer. For Nagpur Metropolitan Area, the State Government has sanctioned D.C.P.R. 2018 along with Substantial Modification (SM) and Excluded Part (EP) vide its resolution dated 05/01/2018. The infrastructure cost as decided by the Authorities shall be recovered while issuing development permission in RZ-3 and RZ-4. There was development agreement executed on 18/06/2012. The condition-14 of the said agreement reads thus-

> "(14)The party No.2 shall not sub-divide the land in this layout without obtaining prior written permission of the Nagpur Improvement Trust, land shall be used for residential use and for the purposes only as shown and specified in the layout plan appended to this agreement. The buildings on land in this layout shall be constructed after getting the building plans sanctioned in accordance with the zoning and development control regulation for the regional plan/A, B & C Municipal Council as may be applicable and in force from time to time and the latrines shall be flushed ones and connected to the sewers.
>
> The party No.2 shall agree that, any amount due to the Nagpur Improvement Trust on account of development works taken up by the Nagpur Improvement Trust as per the terms of this agreement or on any account, that the due amount shall be a first charge on land and shall be recovered by the Nagpur Improvement Trust as per the law. The party No.2 shall recite this and other terms in the sale deed/s of the layout/land that, shall be sold by the party No.2 and shall be binding on the purchasers."

Therefore, it is not open for the petitioner to dispute the same by filing petitions. As per sanction modification by the State Government on 05/01/2018, following clause provides:

> "Residential Zone viz. R-1, R-2, R-3 and R-4 proposed in the submitted draft Development Plan is merge into Common Residential Zone (R). The development in this common Residential Zone is permissible as per the Development Control and Promotion Regulations sanctions for the NMRDA area. However the Infrastructure Cost as decided by the Authority shall be recovered while issuing development permission in R3 and R 4 Zone."

12. The respondents made it clear as per development agreement dated 18/06/2012, that all the internal development is to be done by the petitioner in Mouza Jamtha. The total expenditure incurred by the answering respondents on development work is about Rs.17.36 Crores and again total development works of Rs.5.43 Crores are under progress. The petitioner has requested for providing 1.5 MLD water for residents of layout at Mouza Jamtha. The pipeline laid by NMRDA from Shankarpur to Sondapar. For that purpose, the development work of Rs.18.00 Crores are required to be provided for water pipeline. As the petitioner revised building plan twice, the infrastructure cost was demanded. It was pointed out that the petitioner on affidavit agreed to bear entire cost for laying of water pipeline and all other infrastructure for outer township project at

Jamtha. The provisions of recovery of infrastructure cost is sanctioned by the Government and it is not development charge. It is the infrastructure cost recovered for providing infrastructure facilities in the Nagpur Metropolitan Region Development Authority area, which is in the interest of public at large. If it is interfered at the behest of the petitioner, it may amount to interference in the policy decision of the State Government and may also result financial loss to the Planning Authority as well as the State Government. The infrastructure facilities such as road, water supply and sewer line upto the layout of the petitioner are to be provided by the Authority, which requires substantial expenditure.

13. The learned counsel for the respondents relied on the following judgments to support their case:

(i) **Joint Action Committee of Airline v. Director General of Civil Aviation & others, (2011) 5 SCC 435 (Paras-11, 12),**

(ii) **State of U.P. v. Karunesh Kumar, 2022 SCC OnLine SC 1706 (Para-22),**

(iii) **Yamuna Expressway Industrial Development Authority ETC v. Shakuntala Education & Welfare Society, 2022 SCC OnLine (SC) 655 (Para-65-Note),**

(iv) **Ratilal Pannachand Gandhi v. State of Bombay, AIR 1954 SC 388 (Para-22),**

(v) **Shri Krishna Das V/s. Town Area Committee {1990 (3) SCC 645}**

(vi) **State of U.P. v. Malti Kaul, (1996) 10 SCC 425 (Paras-13 and 15),**

(vii) **New Okhla Industrial Development Authority v. Ravindra Kumar Singhvi, 2022 LiveLaw SC 184 (Paras-17 and 18),**

(viii) **Narayanrao Jagobaji Gowande Public Trust v. State of Maharashtra, (2016) 4 SCC 443 (Paras-39, 47),**

(ix) **The Chief Engineer Water Resources Department v. Rattan India Power Ltd., 2023 LiveLaw (SC) 32 (Para-6),**

(x) **Vijay Nanikram Bhatia v. State of Maharashtra, 2023 SCC OnLine Bom 2707, (Paras-25 to 29).**

14. Heard respective parties at length, perused the documents placed on record and considered the citations relied on by the respective parties.

15. There is an agreement executed on 18/06/2012 between the petitioner and the NIT. From this agreement, it appears that the internal development would be carried out at the cost of petitioner, whereas the peripheral development has to be carried out by the NIT, subject to peripheral development charges, which may be assessed from the plot in accordance with the provisions of the Nagpur Improvement Trust Act and Maharashtra Regional and Town Planning Act. The petitioner applied for revised plan twice. In view of second revised plan, demand note for infrastructure charges (as per SM-1) and other required building charges was issued to the petitioner vide demand note dated 19/08/2019. It is contended by the petitioner that levy of infrastructure cost is violative of Article 265 of the Constitution of India, which provides that no tax shall be levied

except by authority of law. The petitioner relied on ***Commissioner of Income Tax v. Mcdowell & Co.Ltd.*** (*supra)*, wherein Hon'ble Apex Court held in para-22 as under:

> *"22. Under Article 366(28) "Taxation" has been defined to include the imposition of any tax or impost whether general or local or special and tax shall be construed accordingly. "Impost" means compulsory levy. The well-known and well-settled characteristic of "tax" in its wider sense includes all imposts. Imposts in the context have following characteristics:*
>
> *(i) The power to tax is an incident of sovereignty.*
>
> *(ii) "Law" in the context of Article 265 means an Act of legislature and cannot comprise an executive order or rule without express statutory authority.*
>
> *(iii) The term "tax" under Article 265 read with Article 366(28) includes imposts of every kind viz. tax, duty, cess or fees.*
>
> *(iv) As an incident of sovereignty and in the nature of compulsory exaction, a liability founded on principle of contract cannot be a "tax" in its technical sense as an impost, general, local or special."*

Relying on the judgment of ***Commissioner of Income Tax v. McDowell*** (*supra*), the Hon'ble Apex Court in ***Tata Iron & Steel Co.Ltd. v. State of Bihar*** (*supra*) has taken a similar view.

16. In **Ramon Distilleries Ltd, v. State Of Maharashtra (Writ Petition No.5011/2009) dated 16/06/2022** (*supra*), wherein it is held that collection of any fee or tax ought to be by authority of law

in view of Article 265. In **Ahemadabad Urban Development v. Sharadkumar Jayantikumar Pasawalla** (*supra*), wherein the Hon'ble Apex Court held that there has to be an express provision under the Statute to charge tax or fee and there is no scope of implied authority for imposition of tax or fee. It is contention of the petitioner that section 31(1) of the Maharashtra Regional and Town Planning Act, nowhere permits levy of infrastructure cost. Thus, levy of infrastructure cost is without any authority of law and violative of Article 265 of the Constitution of India. As against this, the respondent Nos.2 and 3 submitted that the infrastructure cost is levied in terms of section 22(m) of the Maharashtra Regional and Town Planning Act and this made to be levied for special permission granted by the Government while sanctioning the development plan and regulations due to which, the petitioner has become entitled for FSI as permissible in RZ-1 and RZ-2. For the sake of convenience section 22(m) of the MRTP Act is reproduced as under:

> "**22. Contents of Development Plan.**
> - A Development plan shall generally indicate the manner in which the use of land in the area of a Planning Authority shall be regulated, and also indicate the manner in which the development of land therein shall be carried out. In particular, it shall provide so far as may be necessary for all or any of the following matters, that is to say,-
>
> (a) to (l) …………..

(m) provisions for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a local authority [2][including imposition of fees, charges and premium, at such rate as may be fixed, by the State Government or the Planning Authority, from time to time, for grant of an additional Floor Space Index or for the special permissions or for the use of discretionary powers under the relevant Development Control Regulations, and also for imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the location, number, size, height, number of storeys and character of buildings and density of population allowed in a specified area, the use and purposes to which buildings or specified areas of land may or may not be appropriated, the sub-division of plots the discontinuance of objectionable users of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs and boardings and other matters as may be considered necessary for carrying out the objects of this Act."

Section 31(1) of the MRTP Act also empowers to sanction draft development plan, which reads as under:-

'31. Sanction to draft Development plan.
Subject to the provisions of this section, and not later than [six months] [These words were substituted for the words 'one year by Maharashtra 10 of 2011, Section 9(1)(a), (w.e.f. 5-4-2011).] from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, [* * *] [The words 'or not later than such further period not exceeding twelve months as it may decide' were deleted by Maharashtra 6 of 1976, Section 12(a).] the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft Development plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper or return

the draft Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan:

[Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period not exceeding,-(i)twelve months, in case of a Municipal Corporation having a population of ten lakhs or more, as per the latest census figures, and (ii) six months, in any other case, as may be specified in such notification:]

[Provided further that, where the modifications proposed to be made by the State Government or submitted by the Planning Authority under section 34 and proposed to be approved by the State Government without any further change are of a substantial nature with respect to the draft Development plan published under section 26, the Government shall publish a notice in the Official Gazette and also in not less than two local newspapers inviting objections and suggestions from any person in respect of the proposed modifications within a period of one month, from the date of such notice.] [This proviso was substituted by Maharashtra 10 of 2011, Section 9(1)(c), (w.e.f. 5-4-2011).]

17. As the provision made in sanction modification for charging infrastructure cost meant for peripheral development, which is permissible in terms of section 22(m) read with section 31(1) of the MRTP Act along with UDCPR-2020 by Regulation No.4.2(i)(v).

18. It is necessary to consider that Section 22 of the MRTP Act mandates that factors to be considered by the Planning Authority

while sanctioning the Development Plan under section 31(1) of the Act.

19. There is no challenge to the validity of section 31(1), what is argued is that the imposition of infrastructure cost is beyond the scope of section 22(m).

20. In our considered opinion, the plea is untenable for the reason that section 22(m) lays down the factors and parameters to be considered while sanctioning a development plan, which include imposition of fees, charges and premium at such rate as may be fixed for the purpose of granting approvals/concessions as indicated therein. Such an imposition is clearly within the legislative competence of the legislature as it can provide for composition of fees, charges and premium for benefits to be accorded to a party while granting sanction. There is also keeping in mind that funds are required to be generated for the overall development of the entire locality and not a particular layout. While the other provisions of the MRTP Act such as section 124A provides for levy of development charge, the same is restricted for the use, change of use of any building or land or development of any land or building, for which permission is required under the Act. It by the language used in a

change restricted for a particular usage or its change of specific piece or parcel of land. Infrastructure charge/cost on the other hand, contemplates the overall development of the entire locality, which would indicate integration of sewer, water, electricity, road, storm water drains between several layouts, to form a homogeneous network and therefore is a charge which cannot be equated with a development charge as levied under section 124A of the MRTP Act.

21. The levy of infrastructure cost is directly relatable to section 22(m) read with section 31(1) of the MRTP Act while considering grant of approval to the development plan and is a separate charge not relatable to the development charge under section 124A of the MRTP Act.

22. Thus, we do not see any reason to accept the plea of the learned counsel for the petitioner. The levy of infrastructure cost is violative of Article 14 and 265 of the Constitution of India. We also hold that the levy of infrastructure cost has legislative competence in view of section 22(m) read with section 31(1) of the MRTP Act.

23. The learned counsel for the petitioner placed reliance on ***Amit Maru & anr. vs State of Maharashtra & anr.*** (*supra*). In the said matter, there was a challenge to the Notification dated 10/04/2008

issued under section 37(1) read with section 154 of the MRTP Act proposing amendments to D.C. Regulation 32 and a direction bringing it into force. The State Government immediately then issued another Notification dated 11/07/2008 in purported exercise of its power under section 37(1)(A) of the MRTP Act. Subsequent thereto a notification was issued on 03/10/2008 sanctioning the modification to Regulation 32 of the Development Control Regulation for Maharashtra. By the impugned Notification, the Floor Space Index (FSI) in the suburbs and extended suburbs of Mumbai had been increased on the respective plots from 1 to 1.33. It was the case of the petitioner therein that FSI is part of the development plan prepared under section 22 of the MRTP Act. Section 37 provides for only minor modifications. The petitioner contended that in this process, the entire infrastructure cost in the suburbs shall get crushed; the amendment has been made by the State Government to increase FSI on erroneous ground; FSI and TDR in the suburbs was already 2 because of the provisions of distribution of TDR; factually FSI in suburbs was 1 and it can go upto 2, only if TDR was used; TDR was created primarily on account of surrender of land in open areas, city parks etc. therefore, question before the Court was whether an amendment can be done in the development plan only to augment financial resources and whether the State Government has legal authority to charge premium for the sale of 0.33 FSI without such action being sanctioned by authority of law and whether such amendment was ultra vires to the provisions of M.R.T.P. Act.

24. The learned counsel for the respondents submitted that in the matter of ***Amit Maru*** (*supra*), Their Lordships considered section 37(1) of the MRTP Act, which is also involved in the present petition and the aspect in those cases was restricted whether any power is available under the Statute for imposition of tax or fee. However, the aspect of execution of agreement of development with the Planning Authority was not under consideration in the matter of ***Amit Maru***, or ***Buildarch*** or in the matter of ***Ahmedabad Urban Development Authority*** (*supra*).

25. The petitioner has already entered into Development Agreement with the Planning Authority vide agreement dated 18/06/2012, 01/08/2014 and 21/07/2022 and consented that petitioners were responsible to pay peripheral development charges and accordingly, the affidavit and undertaking also filed by the petitioner to the Planning Authority for getting plan sanctioned, therefore, now it is not open for the petitioner to challenge the same that it is violative of Article 265 of the Constitution of India. As held

in ***CIT v. McDowell*** (*supra*) incident of sovereignty and in the nature of compulsory exaction a liability founded on, principal of contract cannot be a "tax" in its technical sense as imposed general, local or special. In ***Gupta Modern Breweries v. State of J & K, (2007) 6 SCC 317***, the Hon'ble Apex Court held as under:

> *"It is now well settled principle of law that the regulatory powers are generally to be widely construed. However, empowering the State Government to impose taxes, fees or duties and such demands must be authorised by the Statute and must contain sufficient guidelines."*

In the present matter under the MRTP Act, State is empowered to appoint authority under the Act and to form/pass regulations to be followed by authority.

26. In the matter of **Amit Maru** (*supra*), it is held that the premium levied is *ex facie* not a "regulatory fee". The premium is not for the purpose of meeting the costs or expenses of administering the regulation. The costs or expenses of administering regulation cannot vary according to the value of the land/location. As per the impugned notification, the premium is not for meeting the costs or expenses of administering the regulations. Charging a premium to raise funds for implementation of development plan and for creating infrastructure is clearly beyond the permissible scope/purpose of

regulatory fee i.e. to meet the costs and expenses of administering the regulation, if that can be urged. In the said matter neither aspect of agreement entered into by the party was in question. The essential element of quid pro quo also involved in the present subject matter, as the payment for infrastructure development fees recovered for providing infrastructure facilities i.e. in the public interest such as road, water, electricity, transport etc. Moreover, once the petitioner entered into an agreement and also gave undertaking that he will bear the costs of laying water pipeline for the purpose of drinking water to the plot holders at the time of getting plan sanctioned and subsequently it is not permitted to challenge the same as violative of Article 265 of the Constitution of India.

27. As per section 31 of the MRTP Act, it is the State Government which is the repository of the exclusive power to either accord sanction to the Draft Development Plan submitted to it by the Planning Authority or to return it with direction to modify it or even refuse the sanction with direction to prepare a fresh plan. Therefore, the sanctioned modification dated 05/01/2018 under section 31(1) of the MRTP Act empowers the authority to recover the infrastructure cost while issuing development permission in RZ-3 and RZ-4 which is squarely applicable to the present case.

28. The petitioner after entering into the agreement, was fully aware about the transactions, conditions and respective obligations with commitments, after taking the benefits of same and consenting the same, it cannot challenge the same by way of present petitions. The petitioner before this Court admittedly applied twice for modification and applied for grant of permission under section 44 of the MRTP Act in view of UDCPR-2020.

29. We have already reproduced above Condition-14 of the Development Agreement dated 18/06/2012. So far as agreement dated 01/08/2014, which is produced in Writ Petition No.5386 of 2022, Clause (f) of the said agreement is reproduced below:-

> *"(f) If and when any Improvement scheme/Town Planning Scheme for development of the area in which the aforesaid* ***Khasra Nos.245, 246/1, 246/2, 247, 252, 253, of Mz.Jamtha, Tah.Nagpur (Rural) & Khasra No.42/1, 42/3, 43/1, 43/2, 44/1, 44/2 Mouza Wagdara, Tah. Hingna*** *the Party No.2 shall be liable to pay to the Party No.1 the betterment/peripheral development charges which may be assessed on the plot(s) in accordance with the provisions of the Nagpur Improvement Trust Act, 1936/Maharashtra Regional & Town Planning Act 1966.*
>
> *Provided that the Party No.2 shall be liable to pay Peripheral development charges to the Party No.1 in respect of the unsold plots in layout and the purchasers shall be responsible to pay peripheral development charges to the Party No.1 in respect of the plots sold to them. The Party No.2 doth bind itself to incorporate a clause in the sale deed of each plot to the effect that the plot(s) is sold subject to the responsibility of the*

> *purchaser/s to pay betterment/Peripheral development charges to the Party No.1 in accordance with the provisions of the Nagpur Improvement Trust Act, 1936/Maharashtra Regional & Town Planning Act 1966."*

30. Similar agreement dated 21/07/2022, which is at page 68 in Writ Petition No.5386 of 2022 clauses (3) (f) and (g) are reproduced below:

> *"(3) That the said Party No.2 doth hereby agree:-*
>
> *(f) Party No.2 shall have to deposit non refundable Infrastructure cost to Party No.1 as per the Modification No.1 sanctioned by Government under section 31(1) of the MRTP Act, 1966 of Development Plan of NMA on total land as per the rate decided by the NMRDA.*
>
> *(g) Of the aforesaid land is covered by Town Planning Scheme in future, the party no.02 shall be liable to pay to the Party No.01 the betterment and development charges which may be assessed on the plot(s) in accordance with the provisions of the Maharashtra Metropolitan Region Development Authority Act 2016 (Mah. Act III of 2017)/Maharashtra Regional & Town Planning Act 1966.*
>
> *Provided that the Party No.02 shall be liable to pay development charges to the Party No.01 in respect of the unsold plots in layout and the purchasers shall be responsible to pay development charges to the Party No.01 in respect of the plots sold to them. The Party No.02 doth bind itself to incorporate a clause in the sale deed of each plot to the effect that the plot(s) is sold subject to the responsibility of the purchaser/s to pay betterment/ and development charges to the*

Party No.01 in accordance with the provisions of the Nagpur Metropolitan Region Development Authority Act 2016 (Mah. Act III of 2017) / Maharashtra Regional & Town Planning Act 1966."

By these terms, the petitioner agreed to deposit non-refundable infrastructure cost to Party-1 as per the modification-1 sanctioned by Government under section 31(1) of the MRTP Act, development plan of NMA on total land as per the rate decided by the NMRDA. The petitioner also agreed to pay betterment and development charges if the land in question covered by town planning scheme in future. At the time of granting permission for revised plan, the petitioner was well aware about these conditions and he has deposited also the amount of Rs.6,91,89,600/-. This agreement is duly signed by the petitioner as well as the NMRDA. The said infrastructure cost is as per the regulation No.4.2 (I)(v) of UDCPR-2020, which is reproduced as under:

"4.2 LAND USE CLASSIFICATION AND EQUIVALENCY OF ZONES

The different land use classification in Development / Regional Plan / Planning Proposal & different uses permissible in that land use zone and equivalency of zone in various Authorities areas shall be as given below:-

I) Residential Zone – Following other zones shall be treated as equivalent to Residential zone.

i) to iv)…….

v) Residential Zone – R-3 and R-4, with payment of *infrastructure cost as decided by the Authority."*

31. The learned counsel for the petitioner placed reliance on the judgment of **J. *Jayalalithaa & oths. v. State of Karnataka & oths.*** (*supra*) in support of his contention that the Statute provides for an act to be done in a particular way, then it has to be done in that manner. Other methods or mode of performance are impliedly and necessarily forbidden. There is no dispute over the proposition laid down in the citation. It is thus clear that it is his contention that as Statute provides for levy of development charges for grant of amenities, Planning Authorities forbidden to recover infrastructure cost in the nature of tax/fee, which is a part of development plan which in itself is delegated form of legislation. While contending that, the petitioner has not appreciated the fact that he entered into an agreement with the respondents, agreed to pay infrastructure cost for development in peripheral area. The petitioner has not also considered the fact that he himself applied under section 44 for revised plan and in view thereof, he entered into an agreement of the year 2022, as per UDCPR 2020, the development charges, which were paid does not include infrastructure cost. Though reliance is placed on ***Amit Maru's*** case supra, the aspect of agreement was not dealt with in the said matter. The petitioner conveniently emphasized only

on the fact that he was to incur expenses for streetlights, approach roads, internal pipelines, sewerage line, etc. There is no dispute about this fact, however, this fact also cannot be overlooked that the RZ-4, wherein the land of the petitioner falls, is away from Nagpur city and the development outside the plots is required to be carried out by the respondents knowing the same that such infrastructure cost, the petitioner agreed to pay and still challenge the same by way of these petitions. Considering the recitals in the agreement between the petitioner and the respondents-Authorities of the year 2022, the permission was granted permission to develop plot as per revised map, subject to condition laid down in that agreement. Now there is no question of raising any objection to such conditions. Moreover, the said infrastructure cost can be recovered in view of clause 4.2 (i) (v).

32. The project of the petitioner comes under residential Zone i.e. R-4 area which is currently rural in character and in the future is intended to support only low to very low density development, but which is in close proximity to other planned Urban uses, which are zone under R-4. Therefore, for the development of the infrastructure facilities, the fund is required for allowing the permissible residential use in the R-4 zone. Accordingly, the provision is made in the sanctioned modification for charging infrastructure costs meant for

peripheral development which is permissible in terms of Section 22(m) read with Section 31(1) of the said Act along with DCPR 2018 and UDCPR-2020 vide Regulation No.4.2 (1)(v). The Unified Development Control and Promotion Regulations for Maharashtra State (UDCPR) came into effect from 02/12/2020. These regulations are sanctioned by the State Government under Section 37(1AA)(c) and Section 20(4) of the MRTP Act. Under these regulations under Clause 4.2, land uses classification and equivalency of zones are given, which reads as under:-

> **"4.2 LAND USE CLASSIFICATION AND EQUIVALENCY OF ZONES**
>
> The different land use classifications in Development/Regional Plan/Planning Proposal & different uses permissible in that land use zone and equivalency of zone in various Authorities' areas shall be as given below:-
>
> **I)** Residential Zone - Following other zones shall be treated as equivalent to Residential zone.
> i) Residential Zone-(R1)
> ii) Residential Zone with Shop line. (R-2)
> iii) General Residential Zone.
> iv) Residential Zone – R-2.(1) (----)
> **v) Residential Zone – (2) R-3 and R-4, with payment of (2) infrastructure cost as decided by the Authority.**
> vi) Urbanisable Zone.
> vii) Special Residential Zone.
> viii) Pre-dominantly Residential Zone.
> ix) Slum Improvement Zone.
> x) Low Density Residential Zone in Development Plan of Jalgaon.

xi) Mix use Zone."

(1) The word 'R-3' is deleted vide Corrigendum/Addendum under Regulation No. 1.10 CR 121/21, dt. 2nd December, 2021.

(2) Inserted vide Corrigendum/Addendum No. CR 121/21, dt. 2nd December, 2021.

33. The contention of the respondent(s) is that, the demand was issued with respect to the plots for which the permission was sought under Section 44 of the MRTP Act and not on the entire plots in the township, which is almost 111 acres. The petitioner till today has neither challenged any condition of development agreement executed with respondent- authorities. The petitioner himself applied under Section 44 of the MRTP Act for grant of permission, which comes under the purview of UDCPR-2020. The infrastructure development charges, which is meant for peripheral development i.e. offsite development, which includes construction of roads, sewage treatment plant, water supply, storm drain line, water pipeline, road transportation and other infrastructure facilities in the interest of public at large which is already agreed by the petitioner at the time of sanction of the plan. There are conditions in the development agreement which read as under:-

"A. Condition No. 14 of Development Agreement dated 18/06/2012 **(Document No. 6, Page No. 26-27)** Writ Petition No. 4828/2022 in respect of the Plot No. 7.

B. Condition No. 3F of Development Agreement dated

01/08/2014 **(Document No. 15, Page 71-72)** Writ Petition No. 5386/2022.

C. Condition No. 3F & G of Revised Development Agreement dated 21/07/2022 **(Document No. 19, Page No. 87-88)** Writ Petition No. 5386/2022.

D. Condition No. 3E of Development Agreement dated 18/06/2012 **(Annexure-D, Page 52-53)** of the Writ Petition No. 1890/2022 in respect of the Plot No. 5"

34. As such, it is now not open to challenge charges which are accepted by the petitioner. The petitioner has not challenged any of the conditions of development agreement. As per sanctioned modification, the land included in residential zone, the development permission on this land was regulated as per the provision of Development Control Regulations of Sanctioned Regional Plan. As per the Government Notification issued by the Urban Development Department's dated 23/07/1999, Nagpur Metropolitan Area (NMA) was declared as Planning Authority and as per the Government Notification dated 31/08/2010, Nagpur Improvement Trust was appointed as a Special Planning Authority for Nagpur Metropolitan Area and under Section 26(1) of the MRTP Act and notice to that effect was published in Government Gazette dated 26/02/2015. Development Plan for NMA was sanctioned by Government Notification dated 05/01/2018 which came into force w.e.f. 09/02/2018. As per Sanction Modification-1 (SM-1) of 'the

Scheduled-A' of the notification dated 05/01/2018, Residential Zone viz. R-1, R-2, R-3 and R-4 proposed in the submitted Draft Development which has been merged into Common Residential Zone (R) with the condition that infrastructure cost as decided by the Authority shall be recovered while issuing development permission in R-3 and R-4 Zone considering location of broad zoning of R-3 and R-4 in Draft Development Plan, its development potential and additional cost to be incurred by Planning Authority as compared to location advantages, availability of existing infrastructure and such other factors in R-1 and R-2 Zone and giving advantage of full FSI in R-3 and R-4 zone to similar FSI as compared to R-1 and R-2 Zone. The MRTP Act is enacted with the intention & sole purpose to make provision for planning the Development Plans and their effective implementations. As per provisions of 31 of the said Act, the State Government is empowered to sanction the Draft Development Plan submitted to it for the Area, either without modification or subject to such modifications as it may consider proper. In view of Section 22(m) of the said Act, the Development Plan may indicate matters like provision for permission to be granted for controlling and regulating the use and development of land within the jurisdiction of the local authority including imposition of fees, changes and premium at such rates fixed by the State Government or the Planning Authority from time to time and such other matters as may be considered necessary for carry out the objects of the said Act. On merger of R-3 and R-4 in Common Residential Zone, additional FSI was granted to the density proposed in Draft Development Plan and balancing the same by changing infrastructure charges likely to burden on the Planning Authority in excess to the Regular Development Charges to be recovered under Section 124 of the said Act. Thus, incorporating infrastructure charges in the Development Plan is within the purview of Section 22(m) of the said Act.

35. The learned counsel for respondent nos. 2 and 3 relied on ***Joint Action Committee of Airline*** (supra) wherein, the Hon'ble Apex Court placed reliance on the judgment in ***R.N. Gasain V/s. Yashpal Dhir {SCC PP 687-88},*** wherein it observed in para 10 as under:-

> **"11.** .....
>
> (10) Law does not permit a person to both approbate and reprobate, This principle is based the doctrine of election which postulates that no party can accept and reject that same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid and then turn round and say it is void for the purpose of securing some other advantage'.
>
> **12.** The doctrine of election is based on the rule of stopped - the principle that one cannot approbate and reprobate inheres in it. The doctrine of stopped by

> election is one of the species of estoppels in pais (or equitable estoppel) which is a rule by equity. By that law a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a partly makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."

36. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **State of U.P. V/s. Karunesh Kumar and ors.** (*supra*) wherein the term "Approbate and Reprobate" is explained. In para 22 of **State of U.P. V/s. Karunesh Kumar and ors.** (*supra*), the Hon'ble Apex Court placed reliance on the judgment in **Union of India V/s. N. Murugesan {(2022) 2 SCC 25}** wherein, in para 26, it is held as under:-

> "Approbate and reprobate
>
> "26. These phrases are borrowed from the Scots law. They would only mean, that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as common law principle, if

> such a party actually enjoys the one part fully and on principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppels dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

37. As entered into terms and conditions of the Development Agreement dated 18/06/2012, 01/08/2012, 21/07/2022 and consented for the payment of peripheral development charges/ infrastructure cost, the petitioner has no right to challenge the infrastructure development charges. If it is a policy decision of the Government at the instance of individual, it cannot be superseded. Moreover, it has backing of law.

38. The learned counsel for the respondent nos. 2 and 3 relied on ***Janhit Manch V/s. State & ors. {2019 SCC 505)*** wherein, in para 13, the Hon'ble Apex Court held as under:-

> *"13. We have to keep in mind the principles of separation of powers. The elected Government of the day, which has the mandate of the people, is to take care of policy matters. There is a democratic structure at different levels, starting from the level of Village Panchayats, Nagar Palikas, Municipal Authorities, Legislative Assemblies and the elected parliament each of them has a role to perform. In aspects, as presented in the instant case, a consultative process is always*

helpful, and is one which has already been undertaken. The philosophy of Appellant transmitted as a 2 cannot be mandatory policy of the Government, which is what would happen were a mandamus to be issued on the prayers made. Perspective of individuals may vary, but if the elected bodies which have policy formulation powers is to be superseded by the ideals of each individuals, the situation would be chaotic. The policies formulated and the legislations made, unless they fall foul of the Constitution of India, cannot be interfered with at the behest of the appellants. The appellants have completely missed this point"

39. He further placed reliance on **Yamuna Expressway Industrial Development Authority ETC** *(supra)* wherein the Hon'ble Apex Court in para 65 held as under:-

> "65. We have hereinabove elaborately discussed that when a policy is changed by the state, which is in the general public interest, such policy would prevail over the individual rights/interest. In that view of the matter, we do not find it necessary to refer to the said judgments. The policy of the State Government as reflected in the said G. O. was not only in the larger public interest but also in the interest of the respondents."

40. As the issue involved in the present matter is of policy decision taken by the State along with the Authority by imposing infrastructure development charges which is in terms of Section 22(m) along with Section 31(1) of MRTP Act vide sanctioned modification dated 05/01/2018 and as per regulation No. 4.2(I)(v) of UDCPR-2020, which is in the interest of public at large and the

Authorities are empowered to recover the same in terms of Section 22(m) of MRTP Act. As such, the State is empowered to fix the rate and also empowers the planning authority to recover the same. As such, no interference is required.

41. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **Ratilal Pannachand Gandhi and ors.** (*supra*) wherein the Hon'ble Apex Court held in para 22 as under:-

> "22. Fees on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus id fees there is always an element of 'quid pro quo' which is absent in a tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees, there must be co-relation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services. This can be proved by showing that on the face of the legislative provision itself, the collections are not merged in the general revenue but are set apart and appropriated for rendering these services.
>
> Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be car-marked to meet the expenses of

> rendering these services and must not go to the general revenue of the State to be spend for general public purposes."

42. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **Shri Krishna Das V/s. Town Area Committee** (*supra*), wherein the Hon'ble Apex Court in para 24 held as under:-

> "24. We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve. While there is no quid pro quo between a tax payer and the authority in case of a tax, there is a necessary corelation between fee collected and the service intended to be rendered. Of course the quid pro quo need not be understood in mathematical equivalence but only in a fair correspondence between two. A broad co-relationship is all that is necessary."

43. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **State of U.P. and ors. V/s. Malti Kaul and ors.** (*supra*) in support of his contention that, there is no violation of Article 265 of the Constitution of India. The Hon'ble Apex Court in para 13 and 15 held as under:-

> "13. This considered, we hold that, the Act specifically gives such a power. It is true that under Article 265 of the Constitution no tax can be levied without any authority of law. **There is no quarrel on the proposition of law. In this case, from a reading of the aforesaid provisions it is clear that the statute, instead of prescribing the rate of developmental charges itself, has given power to the rule making authority to regulate the collection of and payment of development fee**. It is seen that under the direction which is not inconsistent with the provisions of the Act, it indicates the method and the manner in which the collection is to be secured so as to see that the area is developed in a planned manner as per the sanctions given by the competent authority. The High Court, therefore, was clearly in error in holding that there is no provision under the Act or the Rules to levy the Development fee."
>
> 15. In **Hingir Rampur Coal Co. Ltd. Vs State of Orissa,** a Constitution Bench of this Court has held that fee is levied essentially for services rendered and there must be an element of quid pro quo between the person who pays it and the public authority that imposes it. The public authority has the power to levy fee in respect of the services rendered. Therefore, compulsory exaction by levy of fee was not ultra vires the power of the authority."

44. In the present matter, the payment for infrastructure development facilities recovered for providing infrastructure facilities is in the public interest. Moreover, the petitioner has already entered into the Development Agreement with the Planning Authorities vide Agreements dated 18/06/2012, 01/08/2014 and 21/07/2022 and consented to pay peripheral development charges/infrastructure cost.

Accordingly, the affidavits and undertaking were also submitted while getting plans sanctioned. As such, it is not open to challenge the same on the ground of violation of Article 265 of the Constitution of India.

45. The affidavits submitted is not mere a formality. The affidavits and undertaking submitted to the Planning Authority at the time of getting the plans sanctions binds the petitioner to pay the infrastructure development charges.

46. The learned counsel for respondent nos. 2 and 3 relied on **New Okhla Industrial Development Authority** (*supra*), wherein the Hon'ble Apex Court held that, *"the essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorized either to administer oath or to accept the affirmation."* There is no objection or challenge to the development agreement at any point of time while entering into such agreement.

47. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **Narayan Jagobaji Gowande Public Trust** (*supra*), wherein the Hon'ble Apex Court held in para 39 and 47 as under:-

> "39. Further, the High Court has rightly observed that another benefit derived by the appellant Trust from the said development agreement is immediate and reciprocal sanction for the development of the said land with permission for the commercial usage of the same, presuming that there would be no acquisition.
>
> 40. …….
>
> (47) When the parties entered into agreement, they were fully aware of the nature of transaction, conditions and respective obligations. There was no objection raised at any point of time while entering into such agreement and even thereafter when petitioners and such other persons who based upon the said agreement got the benefit out of the same. We cannot read the clauses in isolation. We have to read the whole agreement in question. It is very clear even from the provisions of the Contract Act that the consideration of any such agreement was permissible and not unlawful and/or not prohibited by law and was not to defeat the provisions of any law or is fraudulent and/or is immoral or opposed to public policy."

48. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **The Chief Engineer Water Resources Department and ors.** (*supra*), in support of his contention that, in a contractual area where the parties are governed by an agreement in support of which the petitioner has also tendered an undertaking, it will not be possible for the Court to pass any order which would obviate compliance with the agreement. In view of the above referred citation, the Hon'ble Apex Court reiterated what is held in **Narayan Jagobaji** *(supra).*

49. The learned counsel for the respondent nos. 2 and 3 also placed reliance on **Vijay Nanikram Bhatia and ors.** (*supra*) wherein while explaining the true purport of Section 31 of the MRTP Act, this Court held in para 28 and 29 as under:-

> “28. The true purport of section 31 of the Act, if analyzed in the light of the law as discussed above, is that it is the State Government which is the repository of the exclusive power to either accord sanction to the draft development plan submitted to it by the planning authority or to return it with direction to modify it or to even refuse the sanction with the direction to prepare a fresh plan. In such matters, in our opinion, since, it is the State Government which is the exclusive repository of power, the grounds on which challenge in this petition to the impugned notification and the corrigendum issued thereto has been made, are not tenable.
>
> 29. We may also note that for challenging any legislation or legislation, unless its unreasonableness or arbitrariness is established no fault can found with such an exercise, provided the procedure for taking out such subordinate legislation has been followed. In absence of any substantiated averment in the writ petition relating to any flaw in the procedure followed by the respondents as stipulated in the MRTP Act, challenge to the impugned Notification and the corrigendum issued thereto by the State Government sanctioning the draft development plan for the city of Ulhasnagar under section 31 of the MRTP Act is bound to fail.”

50. The learned counsel for the petitioner relied on **Solapur Promoters and Builders Association Society v. State of Maharashtra** (*supra)*, wherein this Court considered the intention behind enacting

the Maharashtra Regional and Town Planning Act, 1966. It is held that the Statement of Object and Reasons underlying the enactment of the Amending Act takes due note of the distinct trend towards urbanization in Maharashtra and of the concentration of the urban population in and around Greater Mumbai and other cities and towns in the State. Urbanization has generated increasing demands for the creation of an infrastructure that would provide basic civic amenities such as roads, water supply, sewerage and electricity. It is held in para-10 as under:

> "10. The Development Charge leviable under Chapter VI-A is a fee that is imposed in order to enable the Authority to provide public amenities within its area and for the maintenance and improvement of the area under its jurisdiction. An institution of use, a change of use or the development of lands and buildings falling within the territorial limits of the jurisdiction of a Planning Authority or a Development Authority places demands on the civic amenities which the authority is required by law to provide. The contribution towards the Development Charge is therefore relatable to the amenities which are provided by the Authority of roads, parks, hospitals, water supply, electricity, sewerage and drainage amongst other public services. These are under Section 2(2) utilities, services and conveniences provided by the Authority within the area of its jurisdiction."

51. In the present matter, the infrastructure cost as per development plan is in relation to provide better amenities within the area and for the maintenance and improvement of the area under the jurisdiction of Development Authority. It is contended by the learned

counsel for the petitioner that any undertaking given by the party concerned cannot expand the statutory jurisdiction of the Authority concerned. He placed reliance on **Sunil Bhupendradeo Thaper v. State of Maharashtra** *(supra)*, wherein this Court held as under:

> "22. Similar such view was taken by the Hon'ble Supreme Court in the case of Shridhar C. Shetty vs. Additional Collector & Competent Authority and others, reported in (2020) 9 SCC 537. The Apex Court while dealing with the tenancy and land laws held that any undertaking given by the party concerned cannot expand the statutory jurisdiction of the authority concerned."

However, in the present matter, infrastructure cost is fixed by the Authority as per the provisions of law and UDCPR 2020.

52. The learned counsel for the petitioner also placed reliance on **Smt. Sharayu D/o Ashok Gokhale v. The Nagpur Municipal Corporation, Nagpur** *(supra)*, however, question involved in the said matter was altogether different, i.e. while renewing lease 3 clauses were inserted in the existing original lease deed. The question before the Court was that whether it was permissible for the Nagpur Municipal Corporation to incorporate additional terms and conditions in the lease deed while renewing it in the absence of any stipulation in the initial lease deed permitting it to do so. The answer to this question was given by this Court in negative. It was held that it is not permissible for the Nagpur Municipal Corporation to incorporate

additional terms and conditions in the lease deed while renewing it, especially when there was no such stipulation in the initial lease deed. In the present matter, there is no question of any renewal or any additional terms while renewing the lease deed. Even contract is not renewed, but in view of application under section 44 after amended development plan is published and Regulations 2020 came into effect, when the new agreement entered into by the petitioner, it is not the case of addition or insertion of new clauses in the earlier contract. This court relied on the decision of this Court in **Smt.Jaikumari**. It was contention in the said petition that insertion of such additional clauses requiring payment of unearned income notwithstanding the decision of this Court in **Smt.Jaikumari** is opposed to public policy and also violates Article 14 of the Constitution of India. It is held that defence of estoppel raised by the Corporation is liable to fall to the ground since estoppel cannot operate against law.

53. In the first place, the petitioner ought to have established how the infrastructure cost demanded by the Corporation is against public policy. In fact, to provide better amenities, the infrastructure cost is levied. If Notification of Regulations 2020 is perused, the NMRDA is appointed as a Special Planning Authority in exercise of the power conferred by section 40(1B) of the Maharashtra Regional

and Town Planning Act, 1966. It is also mentioned in the said Notification that in accordance with section 31(1) of the said Act after making necessary enquiries and after consulting the Director of Town Planning, Maharashtra State, Pune, the State Government has accorded sanction to the said draft development plan with modifications in Schedule-A in exercise of powers conferred by sub-section (1) of Section 31 of the said Act and all other powers enabling it on that behalf the Government of Maharashtra issued Development Control Regulations for the whole Nagpur Metropolitan Area with modifications. The said Development Control and Promotion Regulations is for Nagpur Metropolitan Regional Development Authority. The sanction set of DCPR for NMRDA area is attached with the said Notification. Under these Regulations clause 3.6 provides that any development permission granted earlier may be revised. While granting the revised permission to approved plan and commencement certificate of the earlier permission with the owner and office shall be stamped as “CANCELLED” by the authority. Thus, the Development Authority i.e. NMRDA is having authority to impose infrastructure cost in view of clause 4.2 of the Unified Development Control and Promotion Regulation 2020. These Regulations are passed as per the provisions of the Maharashtra Regional and Town Planning Act, 1966 and approved by the State of Maharashtra.

54. The reliance is also placed by the learned counsel for the petitioner on the citation of **BILT Graphic Paper Products Limited v. State of Maharashtra** *(supra),* wherein the State Government while granting permission to mortgage occupancy Class-II lands to bank and financial institutions demanded mortgage fees of 0.50%. It is held that said levy is found to be without any authority of law in terms of Article 265 read with Article 366(28) of the Constitution of India. It is held that Code of 1966 and specially section 36(4) thereof does not empower the State Government to levy such mortgage fees while granting permission to an occupant Class-II holder to mortgage such land while seeking loan against the same. The learned counsel for the petitioner also relied on this judgment in support of his contention that if demand of infrastructure cost is without any authority of law, the prayer for refund of the amount of infrastructure cost paid under protest would have to be considered.

55. The learned counsel for the petitioner also relied on **Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial and Investment Corporation** *(supra),* however, in our considered opinion, it is not relevant, as it is in respect of tax.

56. In the present petition, there is sanctioned modification issued by the State Government on 05/01/2018 (SM-1) which

empowers to impose the infrastructure development charges as decided by Authority, shall be recoverable while issuing development permission in R-3 and R-4 Zone.

57. Thus, it appears that, the due procedure is followed in the matter as per Sections 21 to 31 of the MRTP Act and there is no such assertion that, the procedure given under Sections 21 to 31 has not been followed. In view of sanctioned modification issued by the State Government for imposing the infrastructure development charges can be recovered by issuing development permission in R-3 and R-4 Zone. As such, the charges are neither illegal nor contrary to the provisions of law. It cannot be termed as a "tax" as referred above. Therefore, the citations relied on by the petitioner pertaining to tax are not applicable in the present set of facts. The infrastructure costs is levied as per regulation which is promulgated by following due procedure. Neither it is unreasonable nor illegal.

58. Thus, it can be seen from the above discussion that the infrastructure cost is levied by the Authority, as the petitioner applied for revised sanction. Clause 4.2 of Chapter IV of UDCPR 2020, provides for imposing infrastructure cost which can be levied as decided by the Authority in R-3 and R-4 Zones. This infrastructure cost is levied to provide public amenities like roads, water supply,

sewerage line, electricity, etc. Though development of inside the layout is at the cost of developer i.e. petitioner, however, the above cost is required to be recovered from the developer as the said area is in R-4 Zone, which is substantially away from the city and if such infrastructure cost is not levied, it may cause loss to the NMRDA as well as Government. As per Regulations 2020, the NMRDA is declared as Development Authority, who is having authority to impose such cost. Thus, Regulations 2020 are issued by the State of Maharashtra as per the provisions of the Maharashtra Regional and Town Planning Act, 1966 and thus we have no hesitation to hold that there is backing of law to recover such infrastructure cost. In view thereof, there is no merit in the petition and the same is liable to be dismissed. The petition stands dismissed.

59. Rule stands discharged. No order as to costs.

(PRAVIN S. PATIL, J) **(SMT. M. S. JAWALKAR, J)**