



2026:AHC:206360-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 26518 of 2007

Kapil Dev Vyas Filling Station Allahabad and another

.....Petitioners

Versus

State of U.P. and others

.....Respondent(s)

Counsel for the Petitioners	: Priyanka Midha, R.M. Saggi, Ram M. Kaushik
Counsel for the Respondents	: C.S.C., Durga Prasad Singh

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. This petition under Article 226 of the Constitution has been instituted by the petitioner, a sole proprietorship firm managing a Retail Outlet of the Indian Oil Corporation with a prayer that the demand of Rs.15,04,238/- towards impact charges and Rs.6,01,695/- towards open area penalty demanded *vide* letter dated 22.05.2007 issued by the Zonal Officer, Allahabad Development Authority be quashed. There is a further prayer that a *mandamus* be issued to the Allahabad Development Authority (now Prayagraj Development Authority) (for short, 'the PDA'), directing them to accept a sum of Rs.9,69,398/- on account of impact charges and Rs.3,87,759/- towards open area penalty, a sum that the petitioner has already deposited and to release their sanctioned map.

2. The Indian Oil Corporation Limited (for short, 'the Corporation') was running a B Category Retail Outlet through their dealer at the G.T. Road, Manauri since the year 1982. An application for resitement was made by the dealer and the Corporation decided to resite the Retail Outlet at 20/22, Thornhill Road, Allahabad, now Prayagraj. An application was made to the District Magistrate, Allahabad for the grant of a No Objection Certificate to the resited location by the Corporation. The District Magistrate, upon consideration of the Corporation's application, invited reports from the PDA, Nagar Nigam, the Police, the Pollution Control Board, the P.W.D. and other government agencies, whose opinion was relevant. The PDA *vide* their letter dated 05.08.2004 informed the Additional District Magistrate that the establishment of the proposed Retail Outlet could be permitted at 20/22, Thornhill Road, Prayagraj, provided the Company deposited 25% of the circle rate worked out on the total area of land for the proposed Retail Outlet, called impact charges. This charge was required to be paid at the relevant time for establishing a petrol pump in a residential area according to the Zoning Regulations framed by the PDA. It was also said that in case 25% of the impact charges were deposited, the PDA would have no objection to the establishment of the Retail Outlet at the resited location.

3. The District Magistrate *vide* his order dated 06.09.2004 granted a No Objection Certificate as required under the Petroleum and Natural Gas Rules, 1959. The Corporation, accordingly, instructed the dealer to commence construction for commissioning of the Retail Outlet at 20/22, Thornhill Road, Prayagraj *vide* letter dated 08.09.2004. The Corporation submitted a site-plan for sanction to the PDA. On 27.09.2004, for the purpose of processing the site-plan, a sum of Rs.1200/- was deposited with the PDA. On 29.09.2004, the Corporation through its dealer, to wit, the petitioner, was required to deposit a sum of

Rs.5,00,000/- as advance impact fee. The said sum of money was deposited on 29.09.2004. In due course of business, the site-plan should have been processed by the PDA without delay. Since no information was received, an application dated 08.10.2004 was moved to the Zonal Officer for the supply of information as to what further sum of money was required to be paid for sanction of the site-plan.

4. Matters took a different turn here and the District Magistrate *vide* his order dated 01.10.2004 directed that since a complaint had been received from residents of the locality, where the proposed Retail Outlet was to be set up, the commissioning of the Retail Outlet be stopped until further orders. The petitioner challenged the said order by means of Civil Misc. Writ Petition No. 43724 of 2004 before this Court, wherein notice was issued and an interim order of *status quo* was granted. In the meantime, a compromise was arrived at between the dealer and the complainant. In consequence of this compromise, the writ petition was withdrawn on 03.05.2006.

5. The District Magistrate, Prayagraj thereafter invited fresh reports and granted a No Objection Certificate relating to establishment of the Retail Outlet at 20/22, Thornhill Road, Prayagraj *vide* a memo dated 10.08.2006. The Corporation acting through the petitioner requested the PDA to sanction the site-plan submitted on 27.09.2004 *vide* letter dated 14.11.2006 along with the revised site-plan, which was followed by a reminder dated 07.11.2006. On 12.02.2007, certain objections were raised regarding the site-plan submitted earlier and the dealer was required to submit a revised site-plan. This direction was complied with and a revised site-plan was submitted on 28.02.2007 by the petitioner. Next, further modifications were required to be made in the site-plan by the PDA, which too were carried on 26.04.2007.

The PDA *vide* an order dated 22.05.2007 required the Corporation to deposit a total sum of Rs.25,05,635/-.

6. The petitioner says that the memo dated 22.05.2007 issued by the PDA specifically refers to the Corporation's application dated 27.09.2004. The subsequent revised site-plans were submitted on the asking of the PDA with reference to the original application made on 27.09.2004. The total area covered by the site-plan is 878.95 square meters according to the plan originally submitted on 27.09.2004. Going by the Regulations framed by the PDA in this behalf, an area of 410.40 square meters has been set apart for road widening. Therefore, the total area to be used for the Retail Outlet works out to 668.55 square meters, as the petitioner asserts. It appears that at the time their application for sanction of the site-plan was made on 27.09.2004, the circle rate notified by the District Magistrate in regard to Thornhill Road was Rs.5800/- per square meter. The impact charges @ 25% in regard to area of the site-plan, i.e. 668.55 square meters, would work out to a total of Rs.9,69,398/-, as the petitioner says. Similarly, the open area penalty @ 10% of the circle rate with reference to the date of the application for sanction would work out to a sum of Rs.3,87,759/-.

7. Nevertheless, the PDA by the impugned demand has calculated the impact fee and open area penalty on the basis of the circle rate notified by the District Magistrate w.e.f. 24.06.2006 fixed at Rs.9000/- per square meter. Going by the said rate, the demand of impact fee raised by the PDA, is a sum of Rs.15,04,238/- and the open area penalty has been demanded in the figure of Rs.6,01,695/-. The petitioner, who is the Corporation's dealer, has challenged the impact fee and open area penalty by means of this petition on the premise that it is to be worked out on the basis of the circle rate in force at the time when the application for approval of the site-plan was made, to

wit, 27.09.2004, and not the circle rate that came in force w.e.f. 24.06.2006. The challenge is premised on the submission that circle rate is prospective in nature and cannot be applied in respect of an application, which was lying with the PDA for years together, and delay, if any, was on the PDA's part in sanctioning the site-plan. The case is that the Corporation or its dealer cannot be asked to suffer because of the delay in sanction of the site-plan by the PDA for no fault of theirs. There is no justification for the time period of three years consumed by the PDA in granting sanction to the site-plan.

8. When the PDA raised a demand of Rs.25,05,635/- under various heads of levies going by the prevalent circle rate and on account of non-sanction of the building plan interfered with the petitioner's ongoing construction, this writ petition was instituted during the summer vacations on 04.06.2007. This Court at that time passed the following order of interim stay on 07.06.2007:

“Sri Vivek Verma accept notice on behalf of the Development Authority, may file counter affidavit within one month. In case the petitioner deposits a sum of Rs. 2 lacs in addition to 17 lacs then respondent No.3 is directed to sanction the provisional map of the petitioner and it will be provided to the petitioner within a week from the date of the production of the certified copy of this order.

It is also made clear that if the petitioner deposits the amount mentioned above, the respondent will not interfere in construction of the petitioner which is being made for the purposes of running petrol pump according to map submitted by the petitioner.

The amount deposited by the petitioner shall be subject to the final decision of the writ petition.”

9. According to the petitioner's case, they deposited the following sums of money on four different dates towards various levies/ charges demanded by the PDA:

Sr. No.	Date	Amount	Mode	Cheque No.	Bank Name	Account No.
1	27.09.2004	1200	Cash			
2	27.09.2004	500000	Cheque	833970	State Bank of Patiala	
3	29.05.2007	1212871	Cheque	58234	ICICI Bank	628205021386
4	12.06.2007	200000	Cheque	58241	ICICI Bank	628205021386
	Total	1914071				

10. It is surprising that the PDA in all these years from the year 2007 to the current year, i.e. 2026, did not care to file a counter affidavit answering the writ petition. When the matter came up before us on 17.09.2026, we adjourned it to 28.09.2026 in the presence of the learned Counsel for the PDA, granting them time to file a counter affidavit, if not already filed. The said opportunity was also wasted and when the writ petition again came up on 28.09.2026, there was no return on behalf of the PDA. We have recorded that default on the PDA's part in our order dated 28.09.2026, reserving judgment.

11. We also note that though some of the charges, that are raised through the memo dated 22.05.2007 issued by the Zonal Officer, PDA, have since been declared *ultra vires* the authority of any Development Authority to levy by this Court in **Smt. Rekha Rani v. State of U.P. and others, 2013 SCC OnLine All 14183** and by the Supreme Court in **Mathura Vrindavan Development Authority and another v. Rajesh Sharma and others, (2025) 11 SCC 577** yet the petitioner has not amended relief to question those illegal levies or seek its refund.

12. Heard Mr. Ram M. Kaushik, learned Counsel for the petitioner, Mr. Vineet Pandey, learned Counsel appearing on behalf of the Prayagraj Development Authority and Mr. Roopesh Tiwari, learned Standing Counsel on behalf of the State.

13. Though the grounds raised in the writ petition are to the effect that the impact charges and the open area penalty, which alone have been impugned out of the various levies indicated in the memo dated 22.05.2007, be abated by calculating the quantum of these levies tied up to the circle rate that obtained on 27.09.2004, when the application for sanction of the site-plan was made, and not the circle rate in force w.e.f. 24.06.2006, at the hearing of the petition, the learned Counsel for the petitioner urged that these levies were completely illegal in view of the

Bench decision of this Court in **Smt. Rekha Rani** (*supra*) and the Supreme Court in **Rajesh Sharma** (*supra*). It is true that levies by way of inspection fee/ supervision fee while granting sanction of the layout plan, subdivision charges and impact fee have been declared beyond the competence of a Development Authority by the Supreme Court in **Rajesh Sharma**, but in the case before us, the petitioner has questioned the levy of impact fee and open area penalty alone at a particular rate. No other charges or fee demanded through the demand notice dated 22.05.2007 has been impugned.

14. No doubt, the petitioner has not challenged the levy of impact fee and open area penalty as an exaction beyond jurisdiction of the PDA under the Uttar Pradesh Urban Planning and Development Act, 1973 (for short, 'the Act of 1973') and has claimed abatement of these charges alone with reference to the circle rate in force at the time when the petitioner made the application for sanction of the building plan, but levies demanded as impact fee and open area penalty, are nevertheless under challenge. In the day, the writ petition was instituted, these were regarded as valid charges or charges about which the law was in a state of flux.

15. It is well-known that the judgment of a Constitutional Court is declaratory and declares the law what it has always been. Judgments are, therefore, not prospective unless a Constitutional Court declares the law therein and makes it prospective from a particular date. This is not certainly the case with the holding of the Supreme Court in **Rajesh Sharma**, to which we shall presently advert. At the same time, those of the levies carried in the demand notice dated 22.05.2007, that have not been challenged, though declared illegal by the Supreme Court in **Rajesh Sharma**, such as subdivision fee, we think, we ought not to interfere with once no relief regarding those levies has been sought by the

petitioner, which could be done very conveniently by seeking amendment of the writ petition. In **Rajesh Sharma**, the Bench decision in **Smt. Rekha Rani** was partly affirmed and partly reversed in the manner that the holding in **Smt. Rekha Rani** striking down the levy of development charges/ fee by various Development Authorities was upheld by the Supreme Court. Other kinds of levies, not contemplated under Section 15(2-A) of the Act of 1973 was held beyond the competence of a Development Authority to impose. Here, it would be apposite to refer to the holding of the Supreme Court in **Rajesh Sharma**, which reads:

“13. Therefore, as per Section 15(2-A) of the 1973 Act, the Development Authority can levy only those charges, namely, development fees, mutation charges, stacking fees and water fees. The 1973 Act does not permit levy of other charges other than provided under Section 15(2-A) of the 1973 Act.

17. Under the circumstances, in exercise of powers under Section 41 of the 1973 Act, the State could not have issued the orders permitting/allowing the Development Authorities to levy the charges/fees other than provided under Section 15(2-A) of the 1973 Act. At this stage, it is required to be noted that the levy of fees/charges provided under Section 15(2-A), all of them have been specifically defined under Section 2 of the 1973 Act. Therefore, the intention of the Act is to levy only those charges/fees provided/mentioned under Section 15(2-A) of the 1973 Act, otherwise the other charges also would have been defined under the 1973 Act. Levy of such other charges can be said to be hit by Article 265 of the Constitution of India. As per Article 265 of the Constitution of India, there shall not be any levy of tax/fees/charges except in accordance with law and/or as provided under the statute. Under the circumstances and in view of the above, the High Court has rightly set aside the various demand notices by way of levy of inspection fee/supervision fee while granting of sanction layout plan, sub-division charges, impact fee, etc.

18. In view of the above and for the reasons stated above, the levy of development charges/fees by the various Development Authorities of the State of U.P. is hereby confirmed. The decision of the High Court in *Rekha Rani* [*Rekha Rani v. State of U.P.*, 2013 SCC OnLine All 14183] (Civil Appeal No. 4489 of 2014) quashing and setting aside the levy of development charges/fees is hereby quashed and set aside to that extent. The impugned judgments and orders [*Rajesh Sharma v. State of U.P.*, 2011 SCC OnLine All 2911 disposed of in terms of *Umesh Chandra Maheshwari v. Mathura/Vrindavan Development Authority*, 2010 SCC OnLine All 877] , [*Sandhya v. State of U.P.*, 2018 SCC OnLine All 7156] , [*Triloki Nath v. State of U.P.*, 2021 SCC OnLine All 1299 disposed of in terms of *Arti Gupta v. State of U.P.*, 2021 SCC OnLine All 1300] , [*Gulshan Kumar v. Mathura Vrindavan Development Authority*, 2011 SCC OnLine All 2910] , [*Meena v. State of U.P.*, 2011 SCC OnLine All 2912] , [*Agra City Estate Development Organisation v. State of U.P.* (Allahabad High Court, Writ-C No. 32467 of 2003) sub nom *Nisha Kumari v. State of U.P.* (Allahabad High Court, Writ-C No. 61669 of 2010, dated 23-5-2014) 2014 SCC OnLine All 8696] , [*Kishore Bandhu (P) Ltd. v. State of U.P.*, 2011 SCC OnLine All 901] , [*Agrawal Shiksha Mandal Society v. State of U.P.*, 2018 SCC OnLine All 7155] passed by the High Court quashing and setting aside the demand notices/levy of other charges/fees, namely, inspection fee/supervision fee while granting of sanction layout plan, sub-division charges, impact fee, etc. (other than development charges/fees) are hereby confirmed.

19. It is observed and directed that any amount already paid by the respective original writ petitioners other than the development charges/fees and the charges provided under Section 15(2-A), now be refunded to the respective original writ petitioners with 6% interest per annum, within a period of twelve months from today, of course after adjusting development charges/fees. It is made clear that we have not expressed anything on the levy of betterment charges, which, as such, is otherwise permissible under Section 35 of the 1973 Act.”

16. A reading of Section 15(2-A) of the Act of 1973 and the remarks of their Lordships of the Supreme Court in **Rajesh Sharma** make it pellucid that neither impact fee nor open area penalty can be levied by a Development Authority. Therefore, the demand raised through the impugned demand notice regarding impact fee and open area penalty is clearly beyond the authority of the PDA, rendering the impugned demand notice fit to be quashed to that extent.

17. The impact fee that has been demanded is a sum of Rs.15,04,238/- and open area penalty, a sum of Rs.6,01,695/-, as the impugned demand notice dated 22.05.2007 would show. We are, therefore, of opinion that the aforesaid sum of money cannot be levied by the PDA or charged from the petitioner.

18. The petitioners assert that they have deposited with the respondents a total sum of Rs.12,12,871/- along with a letter of protest dated 29.05.2007 faced with the impugned demand notice. At the hearing, it has been stated that a total sum of Rs.19,14,071/- has been deposited, a breakup of which was furnished to the Court during the hearing in the presence of the learned Counsel for the PDA. We note that apart from the sum of Rs.12,12,871/-, that is asserted in paragraph no. 36 of the writ petition to have been paid by the petitioners in response to the impugned demand notice, the interim order dated 07.06.2007 records the fact that a sum of Rs.17 lacs had come to be deposited by the time this writ petition came up for admission and interim stay, restraining the PDA from interfering in the petitioners' construction, was granted, subject to a further deposit of Rs.2 lacs. It was also ordered by way of an interim measure that if a

sum of Rs.2 lacs was deposited, the petitioners' provisional map would be sanctioned by the PDA within a week. Therefore, the contention of the petitioners that a sum of Rs.19,14,071/- have been paid by the petitioners in deference to the impugned demand notice, appears to be correct. Still, we leave it open to the respondents to verify these figures before complying with the orders that we make here.

19. In the result, this writ petition succeeds and is **allowed**. The impugned demand notice dated 22.05.2007 issued by the Zonal Officer, PDA (earlier Allahabad Development Authority) is hereby **quashed** to the extent that it demands a sum of Rs.15,04,238/- towards impact charges and Rs.6,01,695/- towards open area penalty. Out of the total sum of money deposited by the petitioner in compliance with the impugned demand notice, the sum of Rs.15,04,238/- + Rs.6,01,695/-, aggregating to a sum of Rs.21,05,933/-, shall be refunded to the petitioners after setting off the other charges, fee or levies mentioned in the impugned notice within a period of one month of the date of receipt of this order by the Vice-Chairman, PDA. The sum of money to be refunded to the petitioners shall carry simple interest @ 6% per *annum* reckoned from 12.06.2007 until the date of actual refund.

20. There shall be no order as to costs.

21. Let this order be communicated to the Vice-Chairman, Prayagraj Development Authority, Prayagraj by the Registrar (Compliance).

(Indrajeet Shukla,J.) (J.J. Munir,J.)

October 01, 2026

Anoop