

Hiranandani Palace Gardens Private ... vs The State Of Tamil Nadu on 13 September, 2024

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

W.P.No.22755 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2024

PRONOUNCED ON : 13.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.22755, 22756, 22757, 23663, 24825, 24826, 25997 of 2009, and 26803 of 2010 and 2963, 5602, 5720, 5721, 8278, 10701, 12226, 12365, 12834, 13053, 14259, 14364, 19435, 26436, 28642, 30161 of 2011 and 2314, 6978, 7128, 8164, 11216, 21892, 30114, 31598, 33711, 33750 of 2012 and 551, 1541, 5020, 15054 of 2013 and 10998, 12184, 12185, 19041 of 2014 and 29148 of 2016
& M.P.Nos.1 of 2009, 2 of 2009 (2 Nos.), 3 of 2009, 1 of 2010 1 of 2011(10 Nos.), 2 of 2011 (9 Nos.), 3 of 2011 (2 Nos.) 1 of 2012 (8 Nos.) 2 of 2012 (5 Nos.) 3 of 2012 1 of 2013 (8 Nos.) 2 of 2013 (2 Nos.) and 1 of 2014 (3 Nos.)
& W.M.P.Nos. 25192, 25193 of 2016 and 37287 of 2017 and 37577 of 2018 and 29784, 26788 & 26790 of 2024

W.P.No.22755 of 2009 :-

Hiranandani Palace Gardens Private Limited
Rep by its Vice President – Legal and Liaison,
Vahid Mirza
Sigma, 6th Floor, Technology Street,
Hiranandani Garden, Powai,
Mumbai – 400 0076.

... Petitioners

-Vs-

1. The State of Tamil Nadu,
Rep. by the Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Secretary to Government,
<https://www.mhc.tn.gov.in/judis>

Housing and Urban Development Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009.

3. The Chennai Metropolitan Development Authority,
Rep by its Member Secretary,
Thalamuthu Natarajan Malligai,
No.8, Gandhi Irwin Road,
Chennai – 600 008.

4. The Director of Town & Country Planning,
807, Anna Salai, Chennai – 600 002.

5. The Chennai Metropolitan Water
Supply and Sewerage Board,
Rep. by its Managing Director,
No.1, Pumping Station Road,
Chennai .

6. The Deputy Director,
The Director of Town Planning,
Chenglepet Region,
131, GST Road,
Chenglepet.

7. The President, Appur Panchayat,
Senthamangalam Village,
Dist Kanchepuram,
Chengalpet Taluk,

8. Kundrathur Panchayat,
Bathawadi Village,
Kanchepuram District,
Sriperumbadur Taluk,
Tamil Nadu.

9. Kundrathur Panchayat,
Vadapattu Village,

<https://www.mhc.tn.gov.in/judis>

Kancheepuram District,
Sriperumbadur Taluk,
Tamil Nadu.

10. Oriental Bank of Commerce,

Powai Branch,
Mumbai – 400 076.

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the communication of the fourth respondent bearing ROC.No.1593/2007/BA2 dated 11.07.2007, quash the same.

For Petitioner : Mr.Jayesh B.Dolia, Senior Counsel
For M/s.Aiyar & Dolia
For Respondents
For R1, 2, 4 & 6 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.V.Manoharan
Additional Government Pleader
For R3 & 5 : Mr.P.Kumaresan
Additional Advocate General
Assisted by Ms.P.Veena Suresh
Standing Counsel for CMDA

COMMON ORDER

Some of the writ petitions have been filed challenging the provision under Rule 1(2) of the Town and Country Planning (Levy of Infrastructure and Amenity Charges) Rules, 2008 (hereinafter referred to as 'the Rules'); some of the writ petitions have been filed challenging the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. demand thereby levying infrastructure and amenity charges; some of the writ petitions have been filed challenging demand notice thereby directed the petitioner to pay additional infrastructure and amenity charges as per Rule 1(2) of the Rules.

2. The issues involved in all these writ petitions are similar in nature and therefore this Court is inclined to pass a common order.

3. Facts of the case :-

3.1. The petitioners owned their respective lands and submitted application seeking approval for the proposed development. On receipt of the applications for approval, the Executive Officer of the respective municipalities issued no objection and observed that permission for construction would be granted only after obtaining the approval from the Directorate of Town and Country Planning. Thereafter, the Executive Officer of the respective municipalities forwarded the documents pertaining to the applications submitted by the petitioners for approval along with no objection resolution to the Directorate of Town and Country Planning, Chennai. On receipt of the same, the petitioner was directed to deposit some amount towards centage charges. It is the final <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of

2009 etc. step in the process and procedure for granting the approval. While being so, the Directorate of Town and Country Planning issued notice thereby demanded the petitioners to pay infrastructure and basic amenities charges within a period of thirty days.

3.2. The government introduced the levy of Infrastructure and Basic Amenities Charges (hereinafter referred to as 'I&A charges') for the first time and issued government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. Some of the petitioners had challenged the said government order in W.P.No.22744 of 2007 etc., batch and obtained interim order of stay. However, the said writ petitions were disposed by an order dated 02.01.2008 by observing that the said government order in G.O.Ms.No.191 dated 01.06.2007 has been incorporated in the Tamil Nadu Town and Country Planning Act, by amendment and nothing survives in those writ petitions.

3.3. In the meanwhile, though the petitioners had already paid requisite fee, their applications for approval were pending, since the government order in G.O.Ms.No.191 dated 01.06.2007 was under

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. challenge. Thereafter, the petitioners were granted approval for their respective proposed development incorporating certain special conditions subject to out come of the writ petitions challenging the government order in G.O.Ms.No.191 dated 01.06.2007. In fact, in some of the cases, after the approval the government passed order in G.O.Ms.No.191 dated 01.06.2007. Thereafter, once again the petitioners were directed to submit certain documents as per the special conditions. Accordingly, the petitioners submitted documents and also executed gift deed in favour of the respective municipalities, in respect of open space reservation land.

Thereafter, the petitioners were given approval with condition regarding I&A charges as per the government order in G.O.Ms.No.191 dated 01.06.2007, on the out come of the writ petitions along with other conditions.

3.4. Thereafter, the petitioners were issued demand notice towards I&A charges, as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 and directed to remit the said demand amount within a period of fifteen days failing which the final approval granted would be cancelled. Though the petitioners submitted explanation explaining the situation that they had <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. applied for approval long back and in fact, after granting of approval, the government order was passed to levy I&A charges. Without considering the same, the approval was cancelled and directed to treat the constructions which were already made as unauthorised one and also to take further action. Further instructed that the electricity service connection should be disconnected. By another communication, if the I&A charges have not been paid, the approval will be cancelled and consequently proceedings will be initiated as per the provisions under Sections 56(1)(c) and 57 of

the Tamil Nadu Town and Country Planning Act, 1971.

4. Background of the Case :-

4.1. Initially, I&A charges were levied by the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. However, it was challenged before this Court in several writ petitions and this Court granted interim order. Thereafter, the amendment was brought to the Tamil Nadu Town and Country Planning Act vide Amendment Act No. 34 of 2007. In view of the said amendment, all the writ petitions were closed and granted liberty to seek appropriate remedy under the new Act.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 4.2. Further though the Amendment Act viz., Act 34 of 2007 came into force with effect from 01.06.2007 and Section 3 of the Amendment Act validates the levy or collection between 01.06.2007 and the date of publication of gazettee dated 12.11.2007, the said validation section will not have the effect of validating the demand of I&A charges. It stipulates that the rates as determined in accordance with such procedure as may be prescribed. The rates were not prescribed on the date of demand for I&A charges. Further Rules framed under Section 122 r/w Section 63B of the Act vide G.O.Ms.No.22 Housing and Urban Development Department dated 25.01.2008 viz., Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 and the same was published in the official gazette on 26.01.2008. sub clause 2 of Rule 1 of the Rules states that the Rules are deemed to have come into force on 12.11.2007. Therefore, the said Rule 1(2) of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, is under challenge in one set of writ petitions. In other set of writ petitions, the levy of infrastructure and amenities charges by demand notice is under challenge. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

5. Petitioners' Counsel submission:-

5.1. The respective learned counsel and the learned Senior Counsel appearing for the petitioners submitted that as per the provision under Section 123 of the Act, the rules came into force only from the date of publication in the official gazette i.e., on 26.01.2008 or such other particular date as expressed which can only be a date in future to the date of publication. The rules cannot be given retrospective operation unless, otherwise specifically sanctioned by the provisions of the Act. In the absence of any procedure being prescribed on the date of coming into effect of the Act, prescription in Section 3 of the Act for the validation of action prior to coming in to force of the procedure by making appropriate rules cannot be done as the same would continue the prescription under Section 63 B of the Act.

5.2. They further submitted that neither the Act nor the Rules, confer power to cancel the approval which was already given and it cannot declare the constructions which were already made as an unauthorized one and cannot initiate action under Section 56(1)(c) and 57 of the Act. Therefore, the provision under Section 63B of the Act, the

Rules cannot be enforced before it came into effect. Therefore, the levy of <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. infrastructure and basic amenities charges either on the basis of government orders or on the basis of Section 63B of the Act is illegal, arbitrary and colourable exercise of power.

5.3. Originally, the petitioners were demanded to pay I&A charges on the basis of G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. After Amendment Rules, the government passed government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 stating that the G.O.Ms.No.84 is presently applicable. Finally the government passed order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009 and accordingly made demand to pay the I&A charges.

Therefore, the demand made subsequently, after granting approval that too on the basis of the subsequent government orders, which are illegal, unjust and arbitrary. Further the non-payment of I&A charges, the approval was cancelled and also directed to initiate proceeding under Section 56(1)(c) and 57 of the Act. Therefore, it cannot be sustained and liable to be quashed.

6. Respondents' contention :-

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 6.1. Per contra, the respondents filed counter and the learned Additional Advocate General appearing for the respondents submitted that in pursuant to the amendment of Section 63B of the Act, the government passed various government orders prescribing the rates as well as modalities of payment of I&A charges. Accordingly, revised rates shall take into effect from the date of order. By another government order, earlier government order stands cancelled and no modification is necessary. Finally, the government passed order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, thereby directed that the minimum and maximum rates prescribed in Rule 4 of the Rules shall be done away with. It prescribes the amended rates payable per square meter as the I&A charges for different categories of building in different areas.

6.2. According to Section 63B of the Act, before issuing planning permission I&A charges should be levied on the building proposal and the process of planning permission is completed after receiving relevant charges. Therefore, the demand was made based on the prevailing government order, which was issued after technical approval. Therefore, a revised and modified demand was issued for the balance I&A charges <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. with interest, which exists at the time of technical approval. Non-payment of I&A charges in full may cause cancellation of issued planning permission and the development deems to be unauthorized one and as per Sections 56 & 57 of the Act, sealing process may be initiated. Therefore, the provisions of the Act and the Rules are constitutional and legal.

6.3. Accordingly, the petitioners were issued revised demand for collection of I&A charges. The Directorate of Town and Country Planning by its circular dated 14.01.2011, stated that I&A charges will be collected as per the government orders and circular issued and one in force at that time. Further it was clarified by the Secretary, Housing and Urban Development, by its letter dated 22.06.2011 that, the rate of I&A charges applicable as on the date of issue of technical clearance and it shall be levied.

6.4. He further submitted that a challenge was made as against the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007, by way of several writ petitions and the same were dismissed by this Court thereby upholding the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. Thereafter amendment brought into the Act by giving retrospective effect and it is legally valid and maintainable. He also produced a statement showing the details regarding the balance amount of I&A charges to be paid by the petitioners at the time of granting planning permission for their respective planning permission.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. These writ petitions can be considered under the following four categories in lieu of its respective challenge:-

(a) Some of the petitioners challenged the provisions of the Act, Rules and Government Orders.

(b) Some of the petitioners challenged the demand of I&A charges.

(c) Some of the petitioners have challenged the additional demand of I&A charges on the subsequent Government Orders.

(d) Some of the writ petitioners disputed the classification of building and challenged the demand of I&A charges.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

9. On the submission made by the learned counsel appearing on either side and on perusal of the documents and counters affidavits, the following points are arose for consideration :-

(i) Whether the demand for I&A charges prior to the date of gazette publication of the Rules is justifiable?

(ii) Whether the demand of additional I&A charges based on the subsequent government orders can be sustainable after the cut-off date for applicable demand of I&A charges?

(iii) Whether the local or planning authority empowers to revise the final assessment by demanding, higher rate applying earlier government order?

(iv) Whether the local or planning authority has power to revise the I&A charges?

10. Point No.(i) :-

10.1. The Government of Tamil Nadu levied I&A charges by issuing several government orders. While being so, by the Act 34 of 2001 which came into force with effect from 01.06.2007, inserted Section 63B <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. to the Act, thereby empowering local or planning authority to levy and collect I&A charges while according building permission. Accordingly, the right to levy and collection of I&A charges are to be in accordance with such procedure as may be prescribed.

10.2. Thereafter, the government of Tamil Nadu in exercise of powers conferred under Section 122 (2) Clause (bb) r/w Section 63B of the Act framed rules under G.O.Ms.No.22 Housing and Urban Development Department dated 25.01.2008, which was published in gazette on 26.01.2008 called the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenity Charges) Rules, 2008.

Though the Rule was framed on 25.01.2008 and published in government gazette on 26.01.2008, as per the Rule 1(2) of the Rules, stated that the Rules shall be deemed to have come into force on 12.11.2007. Therefore, retrospective application of the Rules with effect from 12.11.2007 is not justifiable and ultra-vires the Act and power vested with the government. Though, the provision under Section 63B of the Act speaks about levy of I&A charges, which was subject to such procedure, as may be prescribed.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 10.3. Accordingly, the government prescribed by framing rules by the government order in G.O.Ms.No.22 Housing and Urban Development Department dated 25.01.2008 and the same was published on 26.01.2008. As per Rule 1(2) of the Rules, the Rules shall be deemed to have come into force only from the date of publication in the official gazette i.e., from 26.01.2008. As per Section 123 of the Act, the Rules can come into force only from the date of publications in the official gazette or such other particular date which can only to be a date in future to the date of publication. That apart, rules cannot be given retrospective operation unless, otherwise specifically sanctioned by the Act. In the absence of any procedure being prescribed on the date of coming into effect of the Act, prescription in Section 3 of the Act, for the validation of actions prior to coming to force of the procedure by making appropriate rules cannot be done as the same would continue the prescription in Section 63B of the Act.

10.4. In this regard the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in (1972) 2 SCC 601 in the case of *Hukam Chand Etc.*, <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Vs. Union the India and ors., which held that if there is no provision in the section which may either expressly or by necessary implication show that the Central Government has been vested with power to make rules with retrospective effect. The Central government would be acting in excess of its power if it gave retrospective effect to any rule. Thus, it is clear that unlike sovereign legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. As stated supra, though the respondents were vested with powers to make Rules, there is no provision which may either expressly or necessary implication show that the respondents have been vested power to make Rules with retrospective effect.

10.5. They also relied upon the judgment reported in (2015) 1 SCC 1 in the case of *Commissioner of Income Tax (Central)-I, New Delhi Vs. Vatika Township Private Limited*, in which the Hon'ble Supreme Court of India held as follows :-

“27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of ‘Interpretation of Statutes’. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation.

The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* :

law looks forward not backward. As was observed in *Phillips vs. Eyre*[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal

with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd*[4]. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In *Government of India & Ors. v. Indian Tobacco Association*[5], the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of *Vijay v. State of Maharashtra & Ors.*[6] It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. in nature. However, we are confronted with any such situation here.” Thus it is clear that the general principle concerned retrospective rules is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. Therefore, the current law should govern current activities.

10.6. They also relied upon another judgment of the Hon'ble Supreme Court of India reported in (2017) 16 SCC 186 in the case of *Federation of India Mineral Industries and ors Vs. Union of India and anr.*, which held as follows :-

“26. The power to give retrospective effect to subordinate legislation whether in the form of rules or regulations or notifications has been the subject matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of

them – indeed it may not even be possible to do so. It would suffice if the principles laid down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorizes it to do so. (*Hukum Chand v. Union of India*⁴ and *Mahabir Vegetable Oils (P) Ltd. v. State of Haryana*).

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (*Panchi Devi v. State of Rajasthan*).

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. (*Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla and State of Rajasthan v. Basant Agrotech (India) Limited.*).

27. A much more erudite, general and broad-

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. based discussion on the subject is to be found in the Constitution Bench decision in *Commissioner of Income Tax (Central) –I v. Vatika Township Private Limited* and we are obviously bound by the conclusions arrived at therein. It is not at all necessary for us to repeat the discussion and the conclusions arrived at by the Constitution Bench in the view that we have taken except to say that our conclusions do not depart from the conclusions arrived at by the Constitution Bench.

28. On the facts before us, it is clear that Section 15 of the MMDR Act empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. This section does not specifically or by necessary implication empower the State Government to frame any rule with retrospective effect. Also, the MMDR Act does not confer any specific power on the State Government to fictionally create the DMF deeming it to be in existence from a date earlier than the date of the notification establishing the DMF. Therefore, it must follow that under the provisions of the MMDR Act that we are concerned with, no State Government has the power to frame a rule with retrospective effect or to create a deeming fiction, either specifically or by <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. necessary intendment.

29. Similarly, Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any rule with retrospective effect. Section 9B(5) and (6) read with clause (qqa) inserted in Section 13(2) of the MMDR Act enable the Central Government to make rules to provide for the amount of payment to be made to the DMF established by the State Government under Section 9B(1) of the MMDR Act. None of these provisions confer any power on the Central Government to require the holder of a mining lease or a prospecting licence-cum-mining lease to contribute to the DMF with retrospective effect. Therefore, even the scope and extent of the rule making power of the Central Government is limited.

30. In view of the position in law as explained above and the factual position before us, the notifications issued by the State Governments must be understood to mean (assuming the DMF could not be established with effect from 12th January, 2015 by a notification issued on a later date) that the DMF was established on the date of publication of each notification. This is reflective of the further submission of the learned Attorney General in Musaliar that was not considered by the Constitution Bench. In our <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. opinion this submission can be extrapolated to the facts of the cases before us and if we do so, we find it well taken. To the extent possible, the validity of a rule, regulation or notification should be upheld. It is not obligatory to declare any notification ultra vires the rule making power of the State Government if its validity can be saved without doing violence to the law. In these cases, we are of opinion that it is not obligatory to declare the notifications ultra vires the rule making power of the State Governments to the extent of their establishing the DMF from a retrospective date, since we can save their validity by reading them as operational from the date of their publication. In any event, no prayer was made before us for striking down the establishment of the DMF as such.

31. Therefore our answer to the first question is that the DMFs were not established retrospectively even though the notifications established them from a date anterior to the date of the notifications - but not before the date of the Ordinance. Assuming the DMFs were established with retrospective effect from 12th January, 2015 it is of no consequence since the retrospective establishment does not prejudicially affect the interests of anybody (as will be seen later). In this view of the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. matter, the notifications do not violate the law laid down in Musaliar and Vatika Township. Even otherwise, their validity can be saved by reading them as operational from the date of publication.” Therefore, no retrospective effect unless parent Act expressly permit the retrospective effect. The delegated legislation is ordinarily prospective in nature and no retrospective effect can be given, in the absence of an express provision. Accordingly, the point No.(i) is answered in favour of the petitioners.

11. Point No.(ii):-

11.1. The minimum and maximum amount was required to be stipulated under Section 63B of the Act and the local or planning authorities were empowered to, on a case to case basis, fix the I&A charges within the band width that may be stipulated. The Rules when initially framed stipulated a minimum and a maximum rate which subsequently has been done away with by the Government by stipulating a uniform rate of infrastructure and amenity charges presumably to avoid any favouritism to

any particular developer. The purpose for demand of infrastructure and amenity charges arise out of the stress that may be <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. caused for providing infrastructure facilities in a particular area when development activities take place.

11.2. Hence, under Rule 7 of the Rules, an application was first required to be made, receipt of which the local or planning authority is required to issue notice upon the person, who is liable to make payment of such infrastructure and amenity charges duly after calling for a report from the concerned officer of the Planning Authority or the Local Authority and determine whether or not and if so what infrastructure and amenity charges was leviable in respect of the building proposed to be constructed. Hence, the owner or occupier is first required to submit an application under Form A. Thereafter, the Assessing Officer under Rule 7 of the Rules is required to

(a) determine whether or not infrastructure and amenity charges are leviable;

(b) on coming to such conclusion, determine the amount so leviable.

He is required to do this after issuing a notice to the owner or occupier under Form B calling for objections from the owner or occupier.

11.3. On receiving objections from the owner or occupier, the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Assessing Officer is required under Rule 8 of the Rules to pass a final assessment order of the infrastructure and amenity charges in Form C. On receipt of the final assessment order under Rule 9, the owner or occupier, as the case may be, is liable to make payment of the infrastructure and amenity charges. In none of the cases, which are subject matter of challenge before this Hon'ble Court, this procedure has been followed. Admittedly in all the cases before this court when on an application for development, a demand in Form C alone demanding the infrastructure and amenity charges has been made and on payment of the same, the planning/building permit is granted. In none of the cases, there has been any application of mind by the Assessing Officer whether or not the infrastructure and amenity charges are leviable.

11.4. Notwithstanding the fact that the procedure as stipulated under Rules 7 to 9 of the Rules, have not been followed in any of the cases, demands were made in the nature of final assessment based on the applicable Government Order on the date of granting of planning permit/building permit. In most of the case, the said amount has been paid. Subsequently the local or planning authority after lapse of over 1½ years and 2 years have sought to revise this earlier assessment/demand by <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. demanding a higher rate of infrastructure and amenity charges applying an earlier Government Order on the pretext that there was some internal technical clearance and such technical clearance date is to be reckoned.

11.5. In fact, the Act doesn't empower the local or planning authority to revise the I&A charges, once the assessment has been made. As per the first demand, the same was in accordance with Form C stipulating an interest of 6% if the amount was not paid in time. The subsequent demand is without

any authority or powers vested with the local or planning authority with the Rules framed under the Act. Therefore, the authorities do not have power to revise or review on the final assessment has been made.

11.6. Without considering the same, appellate authority also confirmed the revised assessment order. In fact, no person can put up construction without building permission being granted by the authority. Though the additional/revised demand have been made based on some technical clearance at an earlier point of time, which is not in accordance with the Act. A pragmatic consideration of the provision of Section 63B of Act with the ground reality is to be reckoned. Without building <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. permission or last of the permits require for putting up construction, no person can put up construction. Any one is entitled to withdraw his application at any point of time and hence the applicable time for levy and assessment of I&A charges should be while granting building permit or last of permits that are required for putting upon construction and not any prior point of time.

11.7. That apart, the subsequent government orders have been superseded the previous government order. While being so, the demand made by the authority based on the earlier government order, which has been superseded, is unsustainable. In most of the cases, while demanding I&A charges at the first instant it was made on the then prevalent government order. It is not permissible in law. Further neither the Act nor the Rules confer power on the respondents to cancel the approval already granted and the construction which were already made is an unauthorized construction and to initiate action under Section 56(1)(c) and 57 of the Act. Therefore, in the absence of any provision in law to take such action, the communications of the respondents are illegal, arbitrary and colourable exercise of power. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 11.8. Insofar as the levy of I&A charges, as per the subsequent government orders, are concerned the learned counsel appearing for the petitioners relied upon the judgment reported in (2019) 15 SCC 212 in the case of Chennai Metropolitan Development Authority Vs. Prestige Estates Project Ltd., in which the Hon'ble Supreme Court of India held as follows :-

"33. On 27 March 2012, while issuing a demand notice to the respondent, it was made clear by the appellant that the planning permission was still to be issued. The submission of the application for permission and the steps taken by the respondent to comply with the conditions and the deposit of the charges did not confer a vested right in the respondent for the grant of planning permission. The grant of planning permission would only ensue upon the appellant scrutinizing the application and determining that the permissions which were sought were in accordance with the development regulations and all other planning requirements holding the field. Before the planning permission was issued, the revised charges for Premium FSI came to be enforced. Once the revised charges came into force with effect from 1 April 2012, the respondent, as the applicant for planning <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. permission, was bound to pay the revised charges. As on 1 April 2012, the respondent had no planning permission in its favour. The submission of the respondent that planning permission was issued in May 2012 evidently will not advance the case of the respondent. The grant of any permission post the revision of

the Premium FSI charges would necessarily be subject to the revised charges. Hence, in raising the demand on the basis of the revised charges on 22 August 2012, the appellant was acting in accordance with law.

34. The principle which we have adopted accords with a consistent line of precedent of this Court. In *State of Tamil Nadu v Hind Stone*¹¹, Justice O Chinnappa Reddy speaking for a Bench of two learned judges of this Court, while interpreting the provisions of Rule 2 (A) of the Mines and Minerals (Regulation and Development) Act 1957 observed :

“13...While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist.”

35. The same principle was followed by another two judge Bench of this Court in *Howrah Municipal Corporation v Ganges Rope Co. Ltd.*, Justice D M Dharmadhikari speaking for the court held :

“17...The statutory provisions regulating sanction for construction within the municipal area are intended to ensure proper administration of the area and provide proper civic amenities to it. The paramount considerations of regulatory provisions for construction activities are public interest and convenience. On the subject of seeking sanction for construction, no vested <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. right can be claimed by any citizen divorced from public interest or public convenience.” This Court held that the provisions contained in the *Howrah Municipal Corporation Act 1980* contemplate an express sanction before a person can be allowed to construct or erect a building. Hence, in ordinary course, no vested right is created merely by the submission of an application for sanction to construct a building. Adverting to the decision in *Usman Gani J. Khatri of Bombay v Cantonment Board*¹³, the Court held thus:

“30. This Court, thus, has taken a view that the Building Rules or Regulations prevailing at the time of sanction would govern the subject of sanction and not the

Rules and Regulations existing on the date of application for sanction.”” 11.9. Thus it is clear that the crucial date for determination of applicable charges is the date on which the planning permission is granted. Further building rules or regulations prevailing at the time of sanction would govern the subject of sanction and not the rules and regulations existing on the date of application for sanction. Further the law for approval of the building planning would be the date on which the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. approval is granted and not the date on which the plans are submitted.

11.10. As per the original demand of I&A charges, the petitioners had paid amount and they were granted approval for their respective construction on the basis of the prevalent government order.

Subsequently, the demand impugned in these writ petitions were issued on the basis of the subsequent government order, which is not applicable to the case of the petitioners. The subsequent government order has not come into operation and therefore it would no applicability whatsoever insofar as the approval which were granted before the government order. Therefore, the subsequent demand of I&A charges is illegal, unjust and arbitrary. Accordingly, the point No.(ii) is also answered in favour of the petitioners.

12. Point No.(iii) & (iv):-

12.1. Some of the writ petitions have been filed challenging the provisions under Section 63 B, C r/w Section 3 of the second amendment Act and the Rules 4, 5, 7 and 9 of the Rules and subsequent government orders in G.O.Ms.No.191 Housing and Urban Development Department <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. dated 01.06.2007 and G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009. In order to provide infrastructure like international standard transport facility, new source of water supply system, connecting sewerage and drainage to the trunk system, creation of environment friendly atmosphere and other basic amenities, applying the concept of “user pays”, the collection of I&A charges from the developers has been envisaged under Section 63B of the Act. It is relevant to extract the provision under Section 63B of Act as follows :-

“63-B. Levy of infrastructure and amenities charges .-

(1) Every local authority or the planning authority, as the case may be, while according building permit under the relevant laws or according permission under this Act, as the case may be, shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area so as to meet the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities at the rates as determined in accordance with such procedure as may be prescribed which shall not be less than minimum and not more

than the maximum as may <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. be prescribed, and different rates may be prescribed for different parts of the planning area and for different uses.

(2) The infrastructure and amenities charges shall be leviable on any person who undertakes or carries out any such development or institutes any use or changes any such use.

(3) The collection of the infrastructure and amenities charges shall be made in such manner as may be prescribed.” 12.2. In pursuant to the said provisions, various orders have been passed by the government. The levy of I&A charges is to ensure sustainable development leading to the formation of well planned urban areas and growth centers, provision of adequate basic amenities. As stated supra, it is necessary to provide funds by way of establishing an Infrastructure and Amenities Fund with adequate source of revenue.

Therefore, the government issued order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 for collection of I&A charges. The different categories at rates are as follows :-

(i) Commercial and IT Buildings Rs.500/- per Sq.mt.

(ii) Multistoried Building Rs.1000/- per Sq.mt.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

(iii) Institutions Rs. 200/- per Sq.mt.

(iv) Industrial Use Rs. 300/- per Sq.mt.

It will be credited to Infrastructure and Amenities Fund to be operated and maintained by the Director of Town and Country Planning.

12.3. Subsequently, the government passed order in G.O.Ms.No.215 Housing and Urban Development Department dated 02.07.2007 and G.O.Ms.No.4 Housing and Urban Development Department dated 04.01.2008, thereby ordered some modification. Accordingly, 50% of the I&A charges shall be collected in the first installment at the time of final decision on the application for grant of planning permission and the second installment of 25% shall be collected within the end of six months period from the date of issue of planning permission and the third and final installment shall be collected within one year from the date of payment of second installment or before issue of completion certificate whichever is earlier.

12.4. Thereafter, the Government passed G.O.(Ms).No.22, Housing and Urban Development Department, dated 25.01.2008, whereby the Government, in exercise of its powers conferred under

clause (bb) of sub- section (2) of section 122 read with section 63-B of the Act, <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. have framed the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities charges) Rules, 2008. The Rule 2 (d) of the Rules defines "infrastructure" as being "the sum of technical installations and social institutions creating a basis for human activities. Specifically it is the physical equipment needed to provide services such as transport, power, water supply, sewerage, drainage, communications and access".

12.5. Under Rule 4 of the Rules, it is stated that the Infrastructure and Amenities Charges shall be collected for new constructions, additions to existing constructions and change of use of existing building at the rates not exceeding the maximum rates and not less than the minimum rates in respect of different categories of building. It is therefore made clear under the Rules that the I&A charges are payable only in respect of multistoried buildings, commercial buildings, information technology building, Group development, institutional buildings, industrial buildings and special buildings which have been specifically defined under the Rules. Any building not falling within the categories of buildings mentioned under the Rule 4 of the Rules, will not be subject to assessment of infrastructure and amenities charges. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

12.6. The modalities of payment of I&A charges as laid down in G.O.(Ms).No.4, Housing and Urban Development Department, dated 04.01.2008 have also been reiterated in Rule 9 of the Rules. Rule 10 of the Rules embodies the appeal provision stating that any person aggrieved by the final assessment order of the planning authority or the local authority under Rule 8 of the Rules may, within a period of 30 days from the date on which the order was received by him, appeal against such order to the Chennai Metropolitan Development Authority or to the Director of Town and Country Planning, as the case may be. The second proviso to Rule 10 of the Rules specifically states that no appeal shall be entertained under the said rules, unless it is accompanied by a satisfactory proof of payment of I&A charges admitted by the appellant to be due or 50% of the assessed amount, whichever is higher.

12.7. Further by way of another order in G.O.(Ms). No.34, Housing Urban Development (UD4(1)) Department, dated 08.02.2008, the Government have directed that the applicants seeking planning permission have to pay Initial amount at the rate Rs.100/- per Sq.mtr., as I&A charges along with Indemnity Bond towards the payment of balance of the charges before the issue of completion certificate as per the time <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. schedule to be prescribed.

12.8. Thereafter by way of another order in G.O.(Ms). No.84, Housing and Urban Development Department (UD-4) Department, dated 08.04.2008, the Government directed that the maximum and minimum rates payable as per Rule 4 of the Rules and the modalities of I&A charges as prescribed under Rule 9 of the Rules therein shall be continued. The Government order also states that G.O.(Ms). No.34, dated 08.02.2008 stands cancelled and any modification prescribed as per G.O. (Ms). No.34, dated 08.02.2008 is not necessary.

12.9. Thereafter by way of another order in G.O.(Ms).No.161, Housing and Urban Development (UD-4) Department, dated 09.09.2009 the Government have directed that the minimum and maximum rates prescribed In Rule 4 of the Rules shall be done away with. The said government

order further prescribes the amended rates payable per Sq. mt., as I&A charges for different categories of building in different areas. The government order specifically states that the revised rates shall take effect from the date of the Government Order. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 12.10. That apart, the gap between the supply and demand in urban infrastructure is increasing every year. To meet this demand, it is necessary that the users of these services contribute to the creation of infrastructure assets. Therefore, keeping in view the huge demand for creation of infrastructure and the requirement of funds, Government ordered that the Infrastructure and Amenities Charges shall be increased by 50% of the present prevailing rates in Town and Country Planning areas and CMDA areas, vide G.O.(Ms).No.86, Housing and Urban Development Department dated 28.03.2012. The said Government Order further prescribes the amended rates payable per square meter as the Infrastructure and Amenities Charges for different categories of building in different areas as follows :-

Chennai Coimbatore, Metro Building type Chengalpattu Tiruppur and Other area Politian Kurichi authority building residential building multistoried <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Chennai Coimbatore, Metro Building type Chengalpattu Tiruppur and Other area Politian Kurichi authority building building The Government Order specifically states that the revised rates shall take effect from the date of the order.

12.11. Further, Sections 59 and 63-A of the Act deal with levy of development charges, which is an Independent charge not in any way connected to the levy of Infrastructure and Amenities Charges. The validity of imposition of development charges is pending adjudication before this Court, and the same is not in any way connected with giving effect to the provisions of Section 63-B of the Act empowering the authorities to impose I&A charges for provision of infrastructure and basic amenities necessitated by massive development. Also, the contention of the petitioners that the provisions of the Act do not provide for cancellation of the planning permission is liable to be rejected for the reason that Section 54 of the Act provides that the appropriate planning authority may revoke or modify the planning permission granted under this Act.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 12.12. The I&A charges levied under Section 63-B of the Act are credited to a fund called the State Infrastructure and Amenities Fund constituted by the government under Section 63-C of the Act. It is to meet the impact of development and for ensuring sustainable development of urban and rural areas. As per Rule 6 of the Rules, the I&A charges utilized for the purpose of preparation of infrastructure investment plans, execution of infrastructure investment plans in full or part and for any purpose incidental to the preparation or execution of infrastructure investment plans. Therefore, the provisions under Section 63B of the Act cannot be said as ultravires of the provisions of the Act. Accordingly the point Nos.(iii) & (iv) are answered in favour of the respondents. Object of the Act:-

13. Further the object of the Act is to plan the development and use of urban and rural areas in the State of Tamil Nadu. The I&A charges have been introduced in the Act with the object of dealing

with the increased need for infrastructure and basic amenities which necessarily form part of sustainable development and use of urban and rural with. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. The said charges are utilized for the purposes provided in the Act and the Rules made thereunder and no other purposes.

14. In fact, the benefit which accrues to the petitioners on utilization of the said fund cannot be quantified in terms of money as the object of the fund is creation of better and grater infrastructure and provision of basic amenities. The developments promoted by the petitioners relates to the construction of multistoried buildings, office complexes, residential premises and institutions which do not provide any amenities or services of infrastructure outside the compound wall of such developments. The essential and planned development leading to the formation of well planned urban areas and growth centres.

15. The provision of adequate amenities for their occupants depend on the infrastructure services provided by the government and its department. The development requires high order infrastructure like international standard transport facilities, broad road connectivity, new source of water supply system, sewerage and drainage to the trunk system, creation of environment friendly atmosphere in the urban as well as regional level which require huge capital outlay. Therefore, it is very <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. difficult to meet the needs of the infrastructure facilities, even though development provides outlets for growth of cities. Therefore, some kind of institutional arrangement for mobilization of funds to provide higher order infrastructure at the regional level and in order to improve the situation, the government has to pump huge investment.

16. In fact, the development charge payable for these developments are very meager and would not meet part of the cost of administration of the Act in term of plan preparation, regulation and enforcement. Therefore, it become inevitable for the government to levy a separate charge exclusively for augmenting various infrastructure and basic amenities. Therefore, levy of I&A charges is legal and within the power of the government. Further the Act came into force in the year 1972. Since more than 35 years, ceiling limit of the development charges and other provisions prescribed in the Act are not adequate to meet the expenses and are not commensurate with the cost of land and the facilities provided by them would be of temporary measure. It would end in dependence on government sources finally posing a serious financial crisis to the local bodies. The density of population is becoming high in all major States in the country. The density of population is becoming <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. high in all the rapidly developing growth centers including rural area. Therefore, the contribution received from the developers is very meager and is meant to cover a part of the cost of basic facilities.

17. Further, the development charges being levied under Section 59 of Act by the local authority for use or change of use or building or development requiring permission under the Act, are not specifically collected for infrastructure investment but are is levied as charges for such permission given. Therefore, I&A charges are not to be confused with development charges, which is altogether different. The purpose of the Act is to provide for planning, development and use of the rural and urban land in the State of Tamil Nadu and for the purpose of connected thereunder. Therefore, the

government passed order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007, to collect I&A charges for certain types of developments.

18. In fact, the developments cost range from Rs.3000 to Rs.4000 per sq.ft., whereas the charges proposed in the government order is only Rs.100/- per sq.ft., at a maximum. Therefore, it is very meager and hence these charges compared to the cost of construction which <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. range upwards from Rs.1000/- sq.ft., are low enough and can be affordable by any developer. Therefore, there is no contravention or violation of Article 265 of the constitution of India. The levy has been made in accordance with law and as envisaged by law. Further, already batch of writ petitions were filed challenging the provisions under Section 63 B & C of the Act and all the writ petitions were dismissed by this Court in W.P.No.21402 of 2010 etc., batch by an order dated 30.06.2011.

Conclusion:-

19. In the light of the above discussions, this Court concludes as follows :-

(i) Rule 1(2) of the Rules is ultravires to the provisions of the Act.

(ii) The I&A charges shall be levied as per the prevailing government orders based on the date of planning permission.

(iii) Section 63 B, C of the Act and Rules 4,5,7 & 9 of the Rules stand sustained.

Accordingly, this Court is inclined to pass the following orders in the respective writ petitions.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

20. W.P.No.22755, 22756 & 22757 of 2009 :-

20.1. These writ petitions have been filed for declaration declaring the provisions under Section 63 B & C of the Act r/w Section 3 of the Amendment Act and Rules 4, 5 and 7 of the Rules and consequential government orders in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009 and G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 as null and void and also challenging the demand notice issued by the respondents thereby demanding I&A charges and also to direct the respondents to refund the I&A charges already paid by the petitioner.

20.2. The petitioner company was granted planing permission to build residential apartment on 03.06.2009 on remittance 50% of the I&A charges. Thereafter, by the impugned notices, the petitioner was directed to pay remaining I&A charges as per the government order in G.O.No.84 Housing and Urban Development Department dated 08.04.2008.

Therefore, this Court finds no infirmity or illegality in the impugned demand notices and the petitioner is not entitled for refund of Rs.27,20,50,000/-.

21. W.P.No.23663 of 2009 :-

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 21.1. This writ petition has been filed for declaration declaring that Rule 9 of the Rules will not be applicable to the petitioner's property.

21.2. The petitioner was granted sanction and approval to put up building as early as on 06.09.2007. Even before the commencement of the Rules, the petitioner was provided with planning permission and approval and accordingly, he paid the developmental charges. Therefore, the respondents cannot levy I&A charges and the Rule 9 of the Rules is not applicable to the petitioner's property.

21.3. In view of the above, this Court declares that Rule 9 of the Rules is not applicable to the petitioner's property comprised in Survey No.453/2, Sholinganallur, O.M.R., Chennai. The second respondent is directed to issue completion certificate for the petition's property, if not granted already, forthwith.

22. W.P.Nos.24825 & 24826 of 2009:-

22.1. These writ petitions have been filed challenging the demand notice dated 26.10.2012 issued by the second respondent, thereby directed the petitioner to pay a sum of Rs.2,38,27,000/- and <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Rs.1,41,20,000/- respectively, towards I&A charges.

22.2. The petitioner was granted planning permission to construct I T office building on 26.03.2008 & 08.04.2008 respectively. Thereafter, by the impugned notices, the petitioner was directed to pay remaining I&A charges as per the government order in G.O.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, this Court finds no infirmity or illegality in the impugned demand notices.

23. W.P.No.25997 of 2009 :-

23.1. This writ petition has been filed challenging the demand notice dated 24.11.2009 & 03.12.2009 issued by the second respondent, thereby demanding the petitioner to pay a sum of Rs.1,60,00,000/-

towards I&A charges.

23.2. The petitioner was granted planning permission by an order dated 05.09.2007 and as such the government order in G.O.Ms.No.191 Housing and Urban Development dated 01.06.2007 is applicable to collect the I&A charges. According the petitioner was directed to pay the I&A charges

by the demand notice dated 24.11.2009. This Court finds no <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. infirmity or illegality in the impugned order passed by the second respondent.

24. W.P.No.26803 of 2010 :-

24.1. This writ petition has been filed challenging the demand notice dated 11.11.2010 issued by the second respondent, thereby directed the petitioner to pay a sum of Rs.29,20,000/- towards I&A charges.

24.2. The petitioner Trust intended to build a Polytechnic college at Thiruvallur district and obtained building permission 14.03.2008 on payment of Rs.7,30,000/- towards I&A charges. Therefore, the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges.

However, the impugned demand has been made after granting building permission under the institutional building as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 11.11.2010 issued by the second respondent, is hereby quashed. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

25. W.P.No.2963 of 2011 :-

25.1. This writ petition has been filed challenging the demand notice dated 11.03.2010 issued by the third respondent, thereby directed the petitioner to pay a sum of Rs.1,17,05,000/- towards I&A charges.

25.2. The petitioner intended to build a factory premises and obtained building permission 10.11.2009, on payment I&A charges under industrial building. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009 is applicable to collect I&A charges. However, the impugned demand has been made after granting building permission under the multistoryed building. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 11.03.2010 issued by the third respondent, is hereby quashed.

26. W.P.No.5602 of 2011 :-

26.1. This writ petition has been filed challenging the demand <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. notice dated 10.08.2010 & 02.11.2010 issued by the third respondent, thereby directed the petitioner to pay a sum of Rs.41,60,100/- towards I&A charges.

26.2. The petitioner was granted permission to construct factory premises on 12.03.2008 and directed to pay I&A charges as per G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges. Thereafter, the impugned demand of I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 cannot be sustained and liable to be quashed.

26.3. Accordingly, the impugned demand notices dated 10.08.2010 & 02.11.2010 issued by the third respondent, are hereby quashed. The third respondent is directed to make a fresh demand for I&A charge as per the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 forthwith. If the petitioner failed to pay the said amount, the respondents are directed to proceed as <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. against the petitioner in accordance with law to recover the said amount.

27. W.P.No.5720 of 2011 :-

27.1. This writ petition has been filed challenging the demand notices dated 08.11.2010, 26.11.2010, 03.01.2011, 05.02.2011 and 05.01.2011 issued by the respondents 4 & 3 respectively, thereby demanding I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008.

27.2. The petitioner was granted planning permission on 19.09.2007 for construction of multistoried building for residential apartments and directed to deposit a sum of Rs.48,300/- towards Centage charges Accordingly the petitioner paid the said amount. Thereafter, by the impugned demand notice the petitioner was directed to pay a sum of Rs.9,39,99,650/- towards I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008.

27.3. As stated supra, the petitioner was granted building permission on 19.09.2007 and therefore the government order in <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect the I&A charges. Thereafter, the impugned demand of I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 cannot be sustained and liable to be quashed.

27.4. Accordingly, the impugned demand notices dated 08.11.2010, 26.11.2010, 03.01.2011, 05.01.2011 and 05.02.2011 issued by the respondents 3 & 4 , are hereby quashed. The third respondent is directed to make a fresh demand for I&A charge as per the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 forthwith. If the petitioner failed to pay the said amount, the respondents are directed to proceed as against the petitioner in accordance with law to recover the said amount.

28. W.P.No.5721 of 2011 :-

28.1. This writ petition has been filed for declaration declaring that Section 1(2) of the Rules, is ultravires of the provision of the Act.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 28.2. As stated supra, no retrospective effect unless parent Act expressly permit the retrospective effect. The delegated legislation is ordinarily prospective in nature and no retrospective effect can be given, in the absence of an express provision. Accordingly, Section 1(2) of the Rules, is declared as ultravires and the Writ Petition stands allowed.

29. W.P.No.8278 of 2011 :-

29.1. This writ petition has been filed challenging the demand notice dated 18.02.2011 issued by the second respondent thereby demanded a sum of Rs.10,31,07,750/- within a period of fifteen days.

29.2. The petitioner was granted planning permission 22.11.2010 to construct residential apartments. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. Accordingly, the petitioner paid the entire amount and completed the construction. Thereafter, by the impugned demand notice, the second respondent directed the petitioner to <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not applicable to the petitioner's case. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 18.02.2011, issued by the second respondent, is hereby quashed.

30. W.P.No.10701 of 2011 :-

30.1. This writ petition has been filed challenging the demand notice dated 21.03.2011 issued by the second respondent thereby directed the petitioner to pay arrears of I&A charges to the tune of Rs.6,06,74,160/-.

30.2. The petitioner was granted planning permission 29.10.2009 to construct residential apartments. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. Accordingly, the petitioner paid the entire amount and completed the construction. Thereafter, by the impugned demand notice, the second respondent directed the petitioner to <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not applicable to the petitioner's case. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 21.03.2011 issued by the second respondent, is hereby quashed.

31. W.P.No.12226 of 2011 :-

31.1. This writ petition has been filed challenging the demand notice dated 02.05.2011, issued by the second respondent thereby directed the petitioner to pay arrears of I&A charges to the tune of Rs.8,45,68,635/-.

31.2. The petitioner was granted planning permission 22.04.2010 to construct residential apartments. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. Accordingly, the petitioner paid the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. entire amount and completed the construction. Thereafter, by the impugned demand notice, the second respondent directed the petitioner to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not applicable to the petitioner's case. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 02.05.2011 issued by the second respondent, is hereby quashed.

32. W.P.No.12365 of 2011 :-

32.1. This writ petition has been filed challenging the demand notice dated 25.04.2011, issued by the third respondent thereby directed the petitioner to pay arrears of I&A charges to the tune of Rs.17,08,900/-.

32.2. The petitioner was granted planning permission 09.10.2009 to construct residential apartments. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. Accordingly, the petitioner paid the entire amount and completed the construction. Thereafter, by the impugned demand notice, the third respondent directed the petitioner to <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not applicable to the petitioner's case. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 25.04.2011 issued by the third respondent, is hereby quashed.

33. W.P.No.12834 of 2011 :-

33.1. This writ petition has been filed challenging the demand notice dated 19.05.2011, issued by the third respondent thereby directed the petitioner to pay arrears of I&A charges to the tune of Rs.1,69,98,850/-.

33.2. The petitioner was granted planning permission 15.02.2010 to construct Township consisting 43 villas and 448 apartments.

Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Accordingly, the petitioner paid the entire amount and completed the construction. Thereafter, by the impugned demand notice, the third respondent directed the petitioner to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not applicable to the petitioner's case. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 19.05.2011 issued by the third respondent, is hereby quashed.

34. W.P.No.13053 of 2011 :-

34.1. This writ petition has been filed challenging the demand notice dated 06.05.2020 issued by the first respondent thereby directing the petitioner to pay a sum of Rs.7,50,000/- towards I & A charges and consequential order dated 20.04.2011, passed by the first respondent thereby declared the construction put up by the petitioner as unauthorized construction for nonpayment of I&A charges to the tune of Rs.7,50,000/-.

34.2. The petitioner was granted planning permission to construct rice mill on 17.12.2007. Therefore, the government order in G.O.No.191 <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges. Accordingly, the petitioner paid a sum of Rs.4,50,000/- towards I&A charges and completed the construction.

Thereafter, by the impugned order, the petitioner was directed to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 06.05.2020 issued by the first respondent and the consequential order dated 20.04.2011 passed by the first respondent issued by the third respondent, are hereby quashed.

35. W.P.No.14259 of 2011 :-

35.1. This writ petition has been filed challenging the impugned demand notice dated 02.05.2011, thereby directed the petitioner to pay I&A charges to the tune of Rs.11,13,000/- and Security deposit of Rs.59,40,000/- and other amounts under various heads.

35.2. The petitioner applied for planning permission for the purpose of additional construction of canteen at fifth floor part and <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. seventh floor part over the existing building at Plot Nos.16,17,18,19,20A (South phase) Thiru.Vi.Ka Industrial Estate, Guindy, Jawaharlal Nehru Road, Chennai T.SNos.97/3, 98/2, 98/3, 99, 100, 101/2, Block No.5 of

Mambalam Guindy Taluk, T.S.No.3/2b, 2C, 4C, 4B, 5A2 of Alandur Village, S.Nos.391/1, 391/2, Block No.7 of St. Thomas Mount Village.

So far, the petitioner did not make any payment. Therefore, the second respondent rightly issued impugned demand notice to pay security deposit and I&A charges and other charges under various heads. This Court finds no infirmity or illegality in the impugned demand notice.

36. W.P.No.14364 of 2011 :-

36.1. This writ petition has been filed challenging the demand notice dated 29.06.2010 issued by the second respondent, thereby demanding the petitioner to pay a sum of Rs.20,00,000/- towards I&A charges.

36.2. The petitioner was granted planning permission to construct industrial building on 01.11.2007. Therefore, the government order in G.O.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges. Accordingly, the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. petitioner paid a sum of Rs.12,00,000/- towards I&A charges and completed the construction. Thereafter, by the impugned order, the petitioner was directed to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 29.06.2010, issued by the second respondent, is hereby quashed.

37. W.P.No.19435 of 2011 :-

37.1. This writ petition has been filed challenging the demand notice dated 21.03.2011, issued by the third respondent as ultravires of Section 63 B of the Act and Articles 14 & 19(1)(g) of the Constitution of India.

37.2. The petitioner company was granted planning permission to build residential apartment on 01.02.2010 and directed to pay the I&A charges. Thereafter, by the impugned notice, the petitioner was directed to pay remaining I&A charges as per the government order in G.O.No.84 Housing and Urban Development Department dated 08.04.2008.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 37.3. As stated supra, the petitioner was granted building permission on 01.02.2010 and they paid I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009. Therefore, the impugned demand made as per the previous government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 cannot be sustained and liable to be quashed. Accordingly, the impugned order dated 21.03.2011 passed by the third respondent, is hereby quashed.

38. W.P.No.26436 of 2011 :-

38.1. The writ petition has been filed for direction directing the second respondent not to make any demand with the petitioner for any fee towards infrastructure and amenities charges without following the procedure prescribed under Rules 7 & 8 of the Rules.

38.2. The petitioner company was granted planning permission to build a factory premises on 17.10.2007, on condition that the plan sanction was subject to payment of I&A charges, after the outcome of W.P.No. 20587 of 2007. After disposal of the said writ petition, the impugned notice has been rightly issued, thereby demanding the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. petitioner to pay I&A charges as per the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. This Court finds no infirmity or illegality in impugned demand notice and the prayer sought for in this writ petition cannot be granted and the writ petition is liable to be dismissed.

39. W.P.No.28642 of 2011 :-

39.1. This writ petition has been filed as against the order dated Nil.04.2011, passed by the third respondent thereby demanding the petitioner to pay a sum of Rs.1,22,89,200/- towards I&A charges.

39.2. The petitioner was granted planning permission on 28.08.2009 and as per the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, the demand was made on 05.10.2009, in respect of I&A charges to the tune of Rs.1,26,30,000/-. Accordingly, the petitioner paid the said amount.

Thereafter, the impugned demand was made thereby directed to pay further sum of Rs.1,22,89,200/- as per the government order in <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned order passed by the third respondent during April, 2011, is hereby quashed.

40. W.P.No.30161 of 2011 :-

40.1. This writ petition has been filed challenging the demand notice dated 17.08.2011 issued by the respondent, thereby demanding the petitioner to pay a sum of Rs.18,95,370/- towards I&A charges.

40.2. The petitioner company was granted planning approval on 06.01.2010 to construct residential houses. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009 is applicable to collect I&A charges. Accordingly, the petitioner paid a sum of Rs.18,95,370/- towards

I&A charges. Thereafter, the present fresh demand was made thereby demanding further sum of Rs.18,95,370/- as per the government order in G.O.Ms.No.84 Housing <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. and Urban Development Department dated 08.04.2008. Aggrieved by the same, the petitioner also preferred an appeal and the same was also dismissed. Hence, the impugned demand notice dated 17.08.2011 issued by the respondent, is hereby quashed.

41. W.P.No.2314 of 2012 :-

41.1. This writ petition has been filed challenging the demand notices dated 01.12.2011 & 27.12.2011 issued by the respondents 2 & 3, respectively, thereby demanding I&A charges to the tune of Rs.66,74,850/-.

41.2. The petitioner intended to set up industrial unit in Salem and submitted an application for planning permission before the respondents.

On the said application, the first respondent directed the petitioner to pay the I&A charges as per G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007. However, the said government order is under challenge before this Court and hence the petitioner had given an undertaking that if this Court decides the matter against the petitioner, he would pay the amount within fifteen days on receipt of demand notice from the respondents. On such undertaking, the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. petitioner was granted building approval on 28.09.2007. Thereafter, by the impugned demand the petitioner was directed to pay the I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008.

41.3. As stated supra, the petitioner was granted building permission on 28.09.2007 and therefore the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges. Thereafter, the impugned demand of I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 cannot be sustained and liable to be quashed.

41.4. Accordingly, the impugned demand notices dated 01.12.2011 & 27.12.2011 issued by the respondents 2 & 3, are hereby quashed. The third respondent is directed to make a fresh demand for I&A charge as per the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 forthwith. If the petitioner failed to pay the said amount, the respondents are directed to proceed as against the petitioner in accordance with law to recover the said amount. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

42. W.P.No.6978 of 2012 :-

42.1. This writ petition has been filed challenging the demand notice dated 29.02.2012, issued by the second respondent thereby directed the petitioner to pay a sum of Rs.70,59,246/- towards I&A charges.

42.2. The petitioner was granted planning permission to build an IT office building on 08.04.2008. At the time of granting planning permission the petitioner paid a sum of Rs.100/- only as I&A charges and undertook to pay the remaining amount after disposal of the writ petition challenging the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Accordingly, the present demand was made to pay the I&A charges and this Court finds no infirmity or illegality in the demand notice issued by the second respondent.

43. W.P.No.7128 of 2012 :-

43.1. This writ petition has been filed challenging the demand <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. notices dated 21.04.2011 & 17.02.2012 issued by the second respondent, thereby demanding the petitioner to pay a sum of Rs.25,09,100/- towards I&A charges.

43.2. The petitioner was granted planning permission by the proceedings dated 14.09.2009 for the construction of multistoried residential apartments on receipt of centage charges. Thereafter, by the communication dated 25.09.2009, the petitioner was directed to pay I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development Department, dated 09.09.2009. Accordingly, the petitioner paid the entire amount. Subsequently, the impugned demand notice was made by applying the government order in G.O.Ms.No.84 Housing and Urban Development Department, dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 21.04.2011 & 17.02.2012 issued by the second respondent, are hereby quashed.

44. W.P.No.8164 of 2012 :-

44.1. This writ petition has been filed challenging the demand <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. notice dated 15.03.2012 issued by the second respondent, thereby directed the petitioner to pay a sum of Rs. 25,09,100/- towards I&A charges.

44.2. The petitioner was granted planning permission by the proceedings dated 14.07.2009 for the construction of multistoried residential apartments on receipt of centage charges. Further as directed by the second respondent by the communication dated 25.09.2009, the petitioner paid I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development Department, dated 09.09.2009. Thereafter, the impugned demand notice was made as per the government order in G.O.Ms.No.84 Housing and Urban Development Department, dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 15.03.2012 issued by the second respondent, is hereby quashed.

45. W.P.No.11216 of 2012:-

45.1. This writ petition has been filed challenging the demand notices dated 21.04.2011, 08.02.2012, 01.03.2012, 07.03.2012 & <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 03.04.2012 issued by the second respondent, thereby demanding the petitioner to pay a sum of Rs.3,19,05,124/- towards I&A charges.

45.2. The petitioner company was granted planning permission on 27.08.2009 to build up residential apartment. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to collect I&A charges. Accordingly the petitioner paid the I&A charges and the planning permission was also issued. Thereafter, the present demand notices have been issued by applying the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the subsequent demand cannot sustained and liable to be quashed. Accordingly, the impugned demand notices dated 21.04.2011, 08.02.2012, 01.03.2012, 07.03.2012 & 03.04.2012 issued by the second respondent, are hereby quashed.

46. W.P.No.21892 of 2012 :-

46.1. This writ petition has been filed challenging the order dated 26.06.2012, passed by the second respondent thereby rejected the request made by the petitioner seeking refund of I&A charges, by applying the <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009.

46.2. The petitioner was granted planning permission on 17.04.2008 for the construction of IT building. Further, the petitioner was directed to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Accordingly. the petitioner paid the entire amount.

Subsequently, the government issued another order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009, thereby reducing the I&A charges. Therefore, the petitioner made request to refund the excess amount after deducting the I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009.

46.3. As stated supra, the petitioner was granted planning permission on 17.04.2008, and therefore the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008 is applicable to the petitioner's case. Therefore, the request made by the petitioner rightly rejected by the second respondent and this <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Court finds no infirmity or illegality in the impugned order.

47. W.P.No.30114 of 2012 :-

47.1. This writ petition has been filed challenging the demand notices dated 25.04.2011 & 28.12.2011 issued by the third respondent, thereby demanding the

petitioner to pay a sum of Rs.37,42,300/- towards I&A charges.

47.2. The petitioner was granted planning permission 15.10.2009 to construct residential apartments. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development dated 09.09.2009 is applicable to charge the I&A charges. Accordingly, the petitioner paid the entire amount and completed the construction. Thereafter, by the impugned demand notice, the third respondent directed the petitioner to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, which is not <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. applicable to the petitioner's case. Therefore, the impugned demand notices cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 25.04.2011 & 28.12.2011, issued by the third respondent, are hereby quashed.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

48. W.P.No.31598 of 2012:-

48.1. This writ petitions has been filed challenging the demand notices dated 21.03.2011 & 06.09.2012 issued by the second respondent and the clarification letter dated 07.11.2012 issued by the first respondent, thereby directing the petitioner to pay a sum of Rs.74,60,000/- towards I&A charges.

48.2. The petitioner was granted cite approval and planning by an order dated 29.10.2009 for the construction of multistoried residential building. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, is applicable to collect the I&A charges. However, the impugned demand has been made by applying the government order in G.O.Ms.No.84 Housing and Urban Development Department, dated 08.04.2008. Therefore, the impugned demand notices cannot be sustained and liable to be quashed.

Accordingly, the impugned demand notices dated 21.03.2011 & 06.09.2012 issued by the second respondent, are hereby quashed. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

49. W.P.No.33711 of 2012:-

49.1. This writ petition has been filed challenging the demand notices dated 05.04.2011 and 20.11.2012 issued by the third respondent, thereby directing the petitioner to pay a sum of Rs.43,19,930/-. The petitioner company also prayed to refund the I&A charges already paid by them.

49.2. The petitioner company was granted building permission to construct IT building on 27.10.2009. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, is applicable to collect the

I&A charges. Accordingly, the petitioner company paid the I&A charges and completed the construction.

Thereafter, the present demand notice has been issued thereby directed the petitioner to pay I&A charges as per the G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Therefore, the impugned demand notices cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 05.04.2011 and 20.11.2012 issued by the third respondent, are hereby quashed. However, the petitioner is not entitled for any refund. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

50. W.P.No.33750 of 2012 :-

50.1. This writ petition has been filed challenging the demand notice dated 30.11.2012, issued by the second respondent, thereby directed the petitioner to pay a sum of Rs.19,42,000/- towards I&A charges. The petitioner also sought for refund of excess amount as per the government order in G.O.Ms.No.161 Housing and Urban Development Department, dated 09.09.2009.

50.2. The petitioner was granted planning permission to build a multistoried hotel building on 18.12.2007. Therefore, the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges and the same was paid by the petitioner. However, in the impugned demand notice, the second respondent directed the petitioner to pay I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department, dated 08.04.2008. Therefore, the impugned demand notice cannot be sustained and liable to be quashed. Accordingly, the impugned demand notice dated 30.11.2012 issued by the second respondent, are hereby quashed. However, the petitioner is not entitled for refund of any amount.

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

51. W.P.No.551 of 2013 :-

51.1. This writ petition has been filed challenging the demand notice dated 22.11.2012 issued by the second respondent, thereby directing the petitioner to pay a sum of Rs.1,75,000/- towards I&A charges.

51.2. The petitioner is running a business of manufacturing of flyash brick, hollow blocks and paver block, which comes under the small scale industry. For that purpose, he was granted planning permission on the sworn affidavit dated 23.10.2007, made by the petitioner. Therefore, the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect the I&A charges and accordingly the demand was made.

Therefore, this Court finds no infirmity or illegality in the impugned demand made by the second respondent and the writ petition is devoid of merits and liable to be dismissed.

52. W.P.Nos.1541 of 2013 & 29148 of 2016 :-

52.1. The writ petition in W.P.No.1541 of 2013 has been filed challenging the demand notices dated 24.03.2011, 03.12.2012, <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 20.12.2012 issued by the respondents thereby directed the petitioner to pay a sum of Rs.3,28,200/- towards I&A charges. The writ petition in W.P.No.29148 of 2016 has been filed challenging the order dated 20.06.2016 passed by the second respondent and consequential order dated 26.07.2016 passed by the first respondent, thereby directing the petitioner to pay a sum of Rs.3,28,200/- towards I&A charges and apply for additional proposed construction.

52.2. The petitioner was granted planning permission on 06.06.2007 to build a school. Thereafter, the petitioner was directed to pay the I&A charges to the tune of Rs.3,28,200/-. Aggrieved by the same the petitioner filed a writ petition in W.P.No.1541 of 2013 and obtained an interim order of stay. Thereafter, the petitioner was intended to put up separate construction in the school premises. When the petitioner approached the respondents for planning permission for new proposal, the same was also rejected and directed the petitioner to pay the earlier due of Rs.3,28,200/- and the same was under challenged in W.P.No.29148 of 2016.

52.3. As stated supra, the petitioner was granted planning <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. permission on 06.06.2007 and therefore the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect I&A charges from the petitioner.

Accordingly, the petitioner rightly demanded to pay the I&A charges to the tune of Rs.3,28,200/-. This Court finds no infirmity or illegality in the demand notices issued by the respondent in both petitions.

53. W.P.No.5020 of 2013 :-

53.1. This writ petition has been filed challenging the demand notices dated 21.04.2011 & 26.10.2012 issued by the third respondent, thereby directed the petitioner to pay a sum of Rs. 3,18,72,750/- towards I&A charges.

53.2. The petitioner was granted planning permission to build multistoried residential apartment on 06.10.2009. Therefore, the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, is applicable to collect the I&A charges.

However, the impugned demand has been made by applying the government order in G.O.Ms.No.84 Housing and Urban Development Department, dated 08.04.2008. Therefore, the impugned demand notices <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. cannot be sustained and liable to be quashed. Accordingly, the impugned demand notices dated 21.04.2011 & 26.10.2012 issued by the third respondent, are hereby quashed.

54. W.P.No.15054 of 2013 :-

54.1. This writ petition has been filed as against the order dated 10.05.2013, passed by the second respondent viz., Director of Town and Country Planning, thereby dismissing the appeal filed by the petitioner dated 06.02.2012 and confirmed the demand of I&A charges as per G.O.Ms.No.84 Housing and Urban Development dated 08.04.2008.

54.2. The petitioner intended to set up industrial unit in Coimbatore and submitted an application for planning permission on 17.08.2006 before the first respondent viz., Kuruchi New Town Development Authority. Accordingly, the first respondent granted building approval and directed the petitioner to pay a sum of Rs.55,97,400/- towards I&A charges based on the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009. As per the said demand, the petitioner had paid the said amount on 07.10.2009. Subsequent to the said demand, the petitioner <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. was granted planning permission on 08.10.2009.

54.3. While being so, the government passed an order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008, wherein I&A charges in respect of the first respondent was 75% of the maximum rates stipulated from industrial units which amounted to Rs.225/- per square metre. However as per the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009, the I&A charges in respect of the first respondent for industrial buildings is Rs.112.50 per square metre. After lapse of 1-1/2 years on 07.04.2011, the first respondent raised demand of additional I&A charges of Rs.54,50,100/-. It was challenged before the second respondent under Section 76(1) of the Act and the same was dismissed and confirmed the demand raised by the first respondent by the impugned order dated 10.05.2013. Hence, the present writ petition.

54.4. As stated supra, the petitioner was granted building permission on 06.11.2009 and he paid I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. Department dated 09.09.2009. Thereafter, the impugned demand has been made as per the previous government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. Hence, the impugned demand cannot be sustained and liable to be quashed.

Accordingly, the impugned order dated 10.05.2013 passed by the second respondent, is hereby quashed.

55. W.P.No.10998 of 2014 :-

55.1. This writ petition has been filed challenging the demand notice dated 26.03.2014 issued by the second respondent, thereby directed the petitioner to pay a sum of Rs.36,16,250/- towards I&A charges.

55.2. The petitioner was granted planning permission to put up construction for the purpose of Die Casting unit and directed to pay the I&A charges as per the government order in G.O.Ms.No.84 Housing and Urban Development Department dated 08.04.2008. This Court finds no infirmity or illegality in the demand made by the second respondent.

56. W.P.Nos.12184 & 12185 of 2014 :-

<https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc.

56.1. These writ petitions have been filed challenging the demand notices dated 11.03.2014 issued by the third respondent thereby demanding the petitioner to pay a sum of Rs.12,28,750/- & Rs.5,05,000/- respectively, towards I&A charges.

56.2. The petitioners are running spinning mills and they were granted planning permission for construction of their factory building. Thereafter, the petitioner was directed to pay the I&A charges as per the government order in G.O.Ms.No.161 Housing and Urban Development Department dated 09.09.2009. This Court finds no infirmity or illegality in the demand made by the third respondent.

57. W.P.No.19041 of 2014 :-

57.1. This writ petition has been filed challenging the demand notices dated 04.02.2014 & 23.06.2014 issued by the second respondent, thereby directing the petitioner to pay a sum of Rs. 61,70,000/- towards I&A charges.

57.2. The petitioner company was granted planning permission to <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. construct a factory on 02.01.2007. Therefore, the government order in G.O.Ms.No.191 Housing and Urban Development Department dated 01.06.2007 is applicable to collect the I&A charges. Accordingly, the petitioner was demanded to pay the I&A charges and this Court finds no infirmity or illegality in the demand made by the second respondent.

58. Accordingly, the Writ Petitions in W.P.Nos.23663 of 2009 and 26803 of 2010 and 2963, 5721, 8278, 10701, 12226, 12365, 12834, 13053, 14364, 19435, 28642 & 30161 of 2011 and 7128, 8164, 11216, 30114 & 31598 of 2012 and 5020 & 15054 of 2013 are allowed.

The Writ Petitions in W.P.Nos.33711 & 33750 of 2012 are partly allowed.

The Writ Petitions in W.P.Nos.5602 & 5720 of 2011 and 2314 of 2012 are disposed of.

The Writ Petitions in W.P.Nos.22755, 22756, 22757, 24825, 24826 & 25997 of 2009 and 14259 & 26436 of 2011 and 6978 & 21892 of 2012 and 551 & 1541 of 2013 and 10998, 12184, 12185 & 19041 of 2014 and 29148 of 2016 are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs. <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. 13.09.2024 Index : Yes/No Speaking/Non Speaking order Neutral Citation : Yes/No rts To

1. The Chief Secretary, State of Tamil Nadu, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai – 600 009.
 2. The Secretary to Government, Housing and Urban Development Department, Government of Tamil Nadu, Secretariat, Fort St. George, Chennai – 600 009.
 3. The Chennai Metropolitan Development Authority, Rep by its Member Secretary, Thalamuthu Natarajan Malligai, No.8, Gandhi Irwin Road, Chennai – 600 008.
 4. The Director of Town & Country Planning, 807, Anna Salai, Chennai – 600 002.
- <https://www.mhc.tn.gov.in/judis> W.P.No.22755 of 2009 etc. G.K.ILANTHIRAIYAN. J, rts
5. The Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, No.1, Pumping Station Road, Chennai .
 6. The Deputy Director, The Director of Town Planning, Chenglepet Region, 131, GST Road, Chenglepet.
 7. The President, Appur Panchayat, Senthamangalam Village, Dist Kanchepuram, Chengalpet Taluk.
 8. Kundrathur Panchayat, Bathawadi Village, Kanchepuram District, Sriperumbadur Taluk, Tamil Nadu.
 9. Kundrathur Panchayat, Vadakapattu Village, Kancheepuram District, Sriperumbadur Taluk, Tamil Nadu.
 10. Oriental Bank of Commerce, Powai Branch, Mumbai – 400 076.

COMMON ORDER IN W.P.Nos.22755, 22756, 22757, 23663, 24825, 24826, 25997 of 2009, and 26803 of 2010 and 2963, 5602, 5720, 5721, 8278, 10701, 12226, 12365, 12834, 13053, 14259, 14364, 19435, 26436, 28642, 30161 of 2011 and 2314, 6978, 7128, 8164, 11216, 21892, 30114, 31598, 33711, 33750 of 2012 and 551, 1541, 5020, 15054 of 2013 and 10998, 12184, 12185, 19041 of 2014 and 29148 of 2016 13.09.2024 <https://www.mhc.tn.gov.in/judis>