26. In view of the above discussion, Misc. Criminal Application Nos. 12500 of 2005 and 12490 of 2005 fail and are hereby dismissed. Rule is discharged.

Misc. Criminal Application No. 828 of 2006 is hereby allowed. Rule is made absolute.

(NRP) *Applications dismissed.*

* * *

LETTERS PATENT APPEAL

Before the Hon'ble Mr. Justice Jayant Patel
and the Hon'ble Mr. Justice Mohinder Pal

STATE OF GUJARAT & ORS. v. RELIANCE INDUSTRIES LTD. & ORS.*

Gujarat Town Planning and Urban Development Act, 1976 (27 of 1976) — Secs. 99, 7, 29(5) & 36 — Levy of scrutiny fee, development charges etc., by Hazira Area Development Authority — Validity — Held, when Act expressly provides for levy and its utilisation for creation of infrastructure etc. cannot be said that levy has no co-relation with service to be rendered/no *quid pro quo* — Justification for levy by facts and figures not a must — Further, it is lawful for authority to collect refundable security deposit for ensuring compliance — Further, it is lawful to levy premium/impact-fee for regularisation of construction made without permission — Judgment by Single Judge, reversed.

ગુજરાત નગર આયોજન અને શહેરી વિકાસ અધિનિયમ, ૧૯૭૬ — કલમ ૯૯, ૭, ૨૯(૫) અને ૩૬ — હજીરા વિસ્તાર વિકાસ સત્તામંડળે ચકાસણી ફી તથા વિકાસ ખર્ચ લાદ્યા — કાયદેસરતા — ઠરાવવામાં આવ્યું કે, જ્યારે અધિનિયમ સ્પષ્ટતા કરે છે કે, (ખર્ચ તથા ફી) જોગવાઈઓ માળખાકીય સુવિધા ઊભી કરવા માટે લાદવામાં આવે છે, તેથી એમ ન કહી શકાય કે, તેને સુવિધાઓ પૂરી પાડવામાં આવશે તેની સાથે લેવાદેવા નથી/કોઈ બદલો વાળશે નહિ — ફી તથા વિકાસ ખર્ચ બાબત હકીકતો કે રકમની ચોખવટ જરૂરી નથી — વધુમાં, સત્તામંડળ માટે વધારાની રકમ/ઈમ્પેકટ ફી ઉઘરાવવાનું કાયદેસર છે, જેનાથી મંજૂરી વગરના બાંધકામ નિયમિત કરી શકાય — વિદ્વાન ન્યાયાધીશનો ચુકાદો, ઉલટાવી નાખવામાં આવ્યો.

It cannot be said that there is no *quid pro quo* as sought to be canvassed nor can it be said that fee imposed has no co-relation with the services to be rendered. If the development authority has to control the development and has to permit development in the manner as provided in the development plan, it would be required for the development authority to scrutinise the proposal for development. At the time when the proposals are submitted, it would also require for the authority to scrutinise the documents submitted including that of visit of the site, construction whether has been made in accordance with the plan

*Decided on 4-12-2012. Letters Patent Appeal No. 2484 of 2004 in Spl.C.A. No. 9722 of 1993 with L.P.A. No. 2485 of 2004 in Spl.C.A. No. 9626 of 1993.

submitted or not, and other incidental aspects for ensuring that no development is made in contravention to the plan. (Para 15)

Similarly, development fee or charges so collected for permitting development in any area is to be utilised for development of the entire area which is declared as separate area. Therefore, when the Act itself provides in-built mechanism coupled with the above-referred stand taken on behalf of the authority, it cannot be said that fee has no co-relation or there is no *quid pro quo, qua* fee or charges so imposed. (Para 15)

When establishment or functioning for discharging of various services to be rendered as per the scheme of the Act read with Rules by the development authority, it is not must that there must be facts and figures so demonstrated before the Court for justifying quantum of fee imposed. Second reason is that the Act by express provisions provides and speaks for scrutiny fee and development charges. As observed earlier, in-built mechanism provides for collection of scrutiny fee and development fee and its utilisation towards controlling development and permitting development of the development area in accordance with the plan. It also provides for various facilities and infrastructure to be created in the development area by utilisation of the development charges or fee. Therefore, when the Act makes express provisions for imposition of fee, it cannot be said that even in a case where the authority is established for the first time and has imposed the fee for the first time, all the facts and figures must be before the Court before upholding the validity of the action for imposition of fee. Hence, the contention cannot be accepted. (Para 16)

The Court is not agreeable with the view taken by the learned Single Judge that it is required for the authority to state the grounds and reasons for levying of maximum rate of development charges prescribed by the provisions of the Act. (Para 18)

When the area was already included in the development area and for development of such area when there was already separate authority constituted for permitting development, the Gram Panchayat had no authority with it to grant any sanction including that of compound wall. (Para 19)

In a case where the construction is regularised, it has impact for alleged breach *qua* development of the area. It can be said that at the time when the regularisation is to be made subject to fulfilling of the conditions that the construction is not in contravention of the development area, impact-fee may be collected if it is so expressly provided by the Regulation. Instead of the words "impact-fee", the regulation in the present case has used the word "premium". (Para 19)

The security deposit is for ensuring that the construction is made in accordance with the plan so sanctioned and occupation is made in the premises constructed after occupation certificate and such security deposit is to be refunded after grant of occupation certificate. (Para 28)

Hence, it cannot be said that the fee imposed by way of security deposit, though as such, is not the fee, has no *quid pro quo* or no co-relation with the services to be rendered. (Para 28)

If the higher rates have been provided, for those who have acted in breach of the law, for the purpose of regularisation of construction by way of premium, it cannot be said that the rates so prescribed are arbitrary on the ground as sought to be canvassed. (Para 30)

Cases Reversed :

(1) Spl.C.A. Nos. 9722 of 1993 and 9626 of 1993 decided by Guj.H.C.

Devnani, A.G.P., for Appellant Nos. 1 to 4.

K. S. Nanavati, Sr. Advocate with *Keyur Gandhi*, for Nanavati Associates, for Respondent Nos. 1 and 2.

Served by R.P.A.D. (R) for the Respondent No. 2.

Y. F. Mehta, for Respondent No. 3.

JAYANT PATEL, J. As in both the appeals, the common judgment of the learned Single Judge arises for consideration with the common questions involved therein, they are being considered simultaneously.

2. The present appeals are directed against the judgment and order passed by the learned Single Judge in *Special Civil Application No. 9722 of 1993 with Special Civil Application No. 9626 of 1993* whereby the learned Single Judge has declared the action of the authority as well as that of the State Government for imposition of the scrutiny fee, development fee and levy of premium as illegal and void. Learned Single Judge has also allowed the petitioners to get back the refund of the amount of Rs. 1 crore and Rs. 4 lacs which was deposited pending the petitions pursuant to the interim order passed in the petitions.

3. The short facts of the appeals are that on 17-10-1985, the State Government in exercise of the powers under the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred as "the Act") by issuing the notification constituted the Hajira Area Development Authority (hereinafter referred as "the H.A.D.A." for short) for securing the plan development of the area of various villages *i.e.* Damka, Bhatlai, Vasuva, Rajagari, Mora, Limla, Suvali and Hajira, all of Taluka Choryasi, District Surat. It appears that thereafter from the years 1986 to 1990 various parcels of lands and total about 285 hectares of lands were allotted to the original petitioners or its subsidiary company or sister concern for petrochemical complex. The original petitioners thereafter wanted to make construction over the lands which were allotted to it, and therefore, the plans were prepared and they were sent by the original petitioners to the H.A.D.A. for grant of approval and necessary permission. However, on 28-3-1989, the H.A.D.A. informed to the original petitioners that since the Draft Development Plan

is under contemplation and was not published by the competent authority, the question of grant of permission would not arise. It is the say of the original petitioners, that thereafter, they moved to the Gram Panchayat, Mora, Taluka Choryasi for granting construction of the boundary wall which was so granted by the Sarpanch of the Gram Panchayat on 12-5-1989. On 21-8-1989, the H.A.D.A. in exercise of the powers under Secs. 9 and 13 of the Act published the Draft Development Plan and the General Development Control Regulations containing various provisions including (1) scrutiny fee, (2) scrutiny deposit, and (3) premium. On 29-9-1989, pursuant to the meeting held by the H.A.D.A. on 18-9-1989 separate notification was published in exercise of the powers under Sec. 99 of the Act whereby it was proposed to levy and impose development charges. On 1-10-1989, an advertisement was published in the newspaper inviting objections to levy and imposition of development charges as proposed by the H.A.D.A. On 16-10-1989, the H.A.D.A. had issued the circular to all the industries including the original petitioning company informing that it is obligatory to obtain development permission before starting of construction without which development would be treated as illegal. On 21-12-1989, the H.A.D.A. called the Chief Executive Officer of the respondent company and instructed him to stop construction work of Phase-I of their project and asked him to remain present in his office at 1-1-1990. On 4-1-1990, the H.A.D.A. once again instructed the original petitioning company to stop construction activity and to remain present on 15-1-1990. On 11-1-1990, the respondent company submitted reply along with the complete list of their construction activity and the plan of Phase-I to H.A.D.A. On 15-2-1990, the H.A.D.A. informed the respondent company to submit the plan in the prescribed proforma along with scrutiny fee. On 25-4-1991, the H.A.D.A. submitted the proposal for development charges to the State Government for approval. On 23-8-1991, the H.A.D.A. in exercise of the powers conferred under Sec. 29(5) read with Sec. 36 of the Act issued the notice calling upon the original petitioning company to show-cause as to why illegal construction should not be removed. On 21-12-1991, the State Government granted approval to the aforesaid proposal submitted by the H.A.D.A. for development charges as well as for imposition of the fee prescribed. On 8-1-1992, the H.A.D.A. issued another notice calling upon the original petitioning company to remain present and to submit the reply. On 31-1-1992, the H.A.D.A. in its Board-meeting held on 31-1-1992 passed resolution No. 196 for recovery of the development charges as approved by the Government. On 4-2-1992, the notification for levy of the development charges was published in the Government Gazette. On 1-7-1992, the H.A.D.A. issued demand notice upon the original petitioning company demanding a sum of Rs. 8.19 crores comprising Rs. 4,77,77,521/- by way of security deposit, scrutiny fee and premium and

Rs. 3,38,12,460/- towards development charges. On 17-7-1992, the H.A.D.A. issued another notice reiterating its above referred demand. However, as the amount was not paid, on 25-2-1993/9-3-1993 the H.A.D.A. issued the final notice under Sec. 36 of the Act calling upon the original petitioning company not to proceed with construction without permission. Under the circumstances, the original petitioning company preferred two petitions one being Special Civil Application No. 9626 of 1993 for challenging the notification dated 29-9-1989 issued under Sec. 99 of the Act for imposition of development fee at the rate specified in the said notification and approval thereof granted by the State Government and another being Special Civil Application No. 9722 of 1993 challenging Regulation No. 3.3 regarding scrutiny fee, Regulation No. 5.3 regarding scrutiny deposit and Regulation No. 5.8 regarding premium etc.

4. In the said Special Civil Applications before the learned Single Judge, interim order was passed on 26-10-1993 whereby the interim stay against demand notice and further construction was permitted on condition to deposit the total amount Rs. 1,04,00,000/-. It may be recorded that on 28-8-1997 pending the petitions, the State Government dissolved the H.A.D.A. and appointed the Collector, Surat to perform functions under Secs. 120(2)(a)(b) and (c) of the Act. Learned Single Judge, thereafter, heard both the petitions for final disposal and ultimately delivered the above-referred judgment and order whereby the notifications were quashed and imposition of development fee, scrutiny fee, scrutiny deposit and premium were also quashed. Under the circumstances, the present appeals before the Division Bench of this Court.

5. We have heard Mr. Devnani, learned A.G.P. appearing for the appellants and Mr. K. S. Nanavati, Senior Advocate with Mr. Gandhi appearing for the original petitioners respondent Nos. 1 and 2 herein and Mr. Y. F. Mehta for the G.I.D.C. in both the matters. We have also considered the record and proceedings.

6. The first aspect deserves to be considered is the validity of levy or imposition of scrutiny fee, security deposit and premium and the second aspect to be considered is levy or imposition of development fee/development charges. We may first consider challenge to imposition of development fee and then we shall consider challenge to imposition of scrutiny fee, security deposit and premium. However, before we proceed to examine both the aforesaid challenge in particular, the contentions raised broadly for challenging the action of the H.A.D.A. for imposition of fee may be scrutiny fee or development fee or premium as the case may be deserve to be considered.

7. The contention of the original petitioners raised was on the premises that the character of the action for imposition of fee is different than that of imposition of tax. It was submitted that since nomenclature provides for imposition of fee, when any fee is imposed by any authority, it must meet with the test of *quid pro quo*. The fee so imposed must have co-relation with the services to be rendered for such purpose, and it is unlike tax being revenue of the State or authority which may be utilised for any other purpose than the purpose for which it is levied or taxed. It was submitted by learned Counsel for the original petitioners that affidavit-in-reply is as vague as anything to justify the action for imposition of the fee. He submitted that it is obligatory for the authority to place facts and figures showing justification of the quantum of fee which is sought to be levied. No facts and figures are produced nor it has been so reported to the Court about the manner in which the money as may be realised are to be utilised. Therefore, if no services are to be rendered or it is not demonstrated before the Court that such fee is in co-relation to such services to be rendered, the action would be unsustainable in law, and therefore, the action of levying all types of fees *i.e.* scrutiny fee, security deposit, premium as well as development fee are unsustainable and have been rightly quashed by the learned Single Judge. Whereas, it was submitted on behalf of the State by learned A.G.P. that the whole matter is considered with different judicial scrutiny available. He submitted that affidavit-in-reply filed shows sufficient details for justification for imposition of fee and in spite of the same, it has been wrongly considered that the action of imposition of fee is unreasonable and unsustainable.

8. Before we proceed to examine the aspect of co-relation or the principle of *quid pro quo*, it would be necessary to record certain provisions of the Act. Chapter II of the Act provides for development area and constitution of area development authority. Section 3 of the Act provides for declaration of development area. Such action was undertaken and the area including the area in question of the land which is allotted to the petitioning company was already undertaken and there is no challenge on the said aspect. Section 5 of the Act provides for constitution of an area development authority and the said constitution was also made as back as on 17-10-1985 and the area development authority was so constituted. Section 7 provides for the powers and functions of an area development authority in respect of the area which is declared as development authority. The same for ready reference reads as under :

> "7. *Powers and functions of area development authority :-* (1) The powers and functions of an area development authority shall be -
>
> (i) to undertake the preparation of development plans under the provisions of this Act for the development area;

(ii) to undertake the preparation (and execution) of town planning schemes under the provisions of this Act, if so directed by the State Government;

(iii) to carry out surveys in the development area for the preparation of development plans or town planning schemes;

(iv) to control the development activities in accordance with the development plan in the development area;

(iv-a) to levy and collect such scrutiny fees for scrutiny of documents submitted to the appropriate authority for permission for development as may be prescribed by regulations;

(v) to enter into contracts, agreements or arrangements with any person or organisation as the area development authority may deem necessary for performing its function;

(vi) to acquire, hold, manage and dispose of property, movable or immovable, as it may deem necessary;

(vii) to execute works in connection with supply of water, disposal of sewerage and provision of other services and amenities;

(vii-a) to levy and collect such fees for the execution of works referred to in clause (vii) and for provision of other services and amenities as may be prescribed by regulations;

(viii) to exercise such other powers and perform such other functions as are supplemental, incidental or consequential to any of the foregoing powers and functions or as may be directed by the State Government.

(2) The area development authority may, with the approval of the State Government, delegate (any of its powers and functions) to the local authority or authorities within its jurisdiction.

(3) The area development authority shall have its office at such place as the State Government may specify in this behalf."

9. Section 8 of the Act provides for expenses of the area development authority. Section 9 of the Act provides for development plan, and thereafter, Sec. 12 of the Act provides for various aspects to be considered and included for development in the Draft Development Plan. The suggestions and objections, if any, are to be invited to the Draft Development Plan as per Sec. 14 of the Act, and thereafter, the said Draft Development Plan is to be submitted to the State Government for sanction and the State Government after examining the said Draft Development Plan has to consider the matter for grant of sanction under Sec. 17 of the Act. The pertinent aspect is that in the Draft Development Plan, there may be inclusion of acquisition of certain lands for development and such development may be valid after following the procedure in accordance with law. The aforesaid shows that there is in-built mechanism provided for functions to be discharged by the development authority. Another aspect is that Sec. 7(1)(iv) of the Act provides

for controlling of the development activity in the area. Section 7(iv-a) of the Act provides for enabling the power to levy and collect scrutiny fees for scrutiny of the documents submitted to the appropriate authority for permission of the development as prescribed by the Regulations. Section 7(1) of the Act also provides for acquisition of the property, execution of the work for development and for other supplemental, incidental and consequential powers.

10. Section 99 of the Act provided in Chapter VII of the Act to enable the development authority to levy development charges. Section 99 and Sec. 100 of the Act read as under :

"Sec. 99. *Levy of development charges :-* Subject to the provisions of this Act and the rules made thereunder, an appropriate authority may, with the previous sanction of the State Government, by notification, levy a development charge on lands and buildings within the development area at such rate, not exceeding the maximum rates specified in Sec. 100, as it may determine :

Provided that different rates of development charges may be specified for different parts of the development area and for different uses.

Sec. 100. *Rates of development charges :-* (1)(a) The development charges on lands and buildings leviable under Sec. 99 shall be assessed with reference to their use for different purposes such as :

(i) Industrial;

(ii) Commercial;

(iii) Residential; and

(iv) Miscellaneous.

(b) In classifying the lands or buildings under any of the purposes mentioned in clause (a), the predominant purpose for which such lands and buildings are used shall be the main basis.

(2) The rates of development charges shall be determined -

(a) in the case of land, at a rate to be specified per hectare, and

(b) in the case of building, at a rate to be specified per square metre of the floor-area of the building :

Provided that no such rate shall exceed fifty thousand rupees per hectare in the case of development of land, and fifteen rupees per square metre in the case of development of a building :

Provided further that where land appurtenant to a building is used for any purpose independent of the building, development charge may be levied separately for such use also."

11. The aforesaid provisions show that subject to previous sanction of the State Government, development charges on land and building within the development area may be imposed, but not exceeding maximum rates

specified under Sec. 100 of the Act. *Proviso* to Sec. 99 also provides for different rates of development charges may be specified for different parts of development area and for different uses. Section 100 of the Act broadly classifies into four categories for assessment of development charges.

12. The aforesaid provisions of the Act show that there is in-built mechanism provided for levy and collection of fees which includes scrutiny fee and development fee and as per the scheme of the Act read with the Rules, the fund so collected is to be utilised for the services to be rendered in that regard *i.e.* scrutiny fee is to be used towards the services to be rendered for controlling development in the area and for permitting development in the area as per the Draft Development Plan. The development charges so fixed are to be collected and to be utilised for discharging various functions as provided under Sec. 9 of the Act for various facets of the development of the area under the control of the development authority.

13. Having considered the aforesaid statutory provisions, if the stand of the development authority is considered as stated in the affidavit-in-reply filed by Shri K. M. Shah, Senior Town Planner at Paragraph (vii), it has been stated, *inter alia,* as under :

"I submit that under ground (vii) the petitioners have referred to various important aspects :

(i) that the regulations are to be made by an appropriate authority. It is submitted that the regulations have in fact been made by the appropriate authority, hence, this aspect is satisfied.

(ii) that these regulations have to be made with the previous approval of the Government. I submit that it is not the case of the petitioners that the previous approval of the Government has not been obtained, hence, this aspect is also satisfied."

(iii) that they must be consistent with the Act and the Rules made thereunder. I submit that in view of the provisions of the Gujarat Town Planning and Urban Development (Amendment and Validation) Act, 1995, the authority is duly empowered to make such regulations, hence the General Development Control Regulations are consistent with the Act and the Rules. Hence, this aspect is also satisfied."

14. Further, on the aspect of *quid pro quo* and reciprocal services, it has been stated at Paragraph (v) as under :

"(v) The petitioners have raised the contention that the fee contemplates the concept of *quid pro quo* and the reciprocal services rendered by the authorities collecting the fees. I submit that as against the levy of scrutiny fees, reciprocal services in the form of scrutiny of documents submitted are rendered, so is the case with premium fees whereby in cases where

development is carried out without the prior permission of the authority, necessary scrutiny is carried out and if the development is found to be in consonance with the regulations the same is regularised. I submit that in case where development permission is sought prior to carrying out the development, scrutiny of the documents submitted is carried out, and thereafter, the authority may or may not grant the development permission. In cases where the development permission is carried out without the prior permission of the authority, the same is in the nature of unauthorised construction. In such cases, where development permission is sought subsequently, the documents submitted are to be scrutinised and if the development is in consonance with the regulations the same is regularised. However, here the authority is constrained to regularise the development already carried out in contradistinction with the case where development permission is sought prior to carrying out development permission. Hence, in such cases premium is levied which is also termed as composition fees. I submit that such fees are levied against the scrutiny of documents submitted and against the impact caused by the unauthorised construction whereby the authority is left with no choice but to regularise the same if it is in consonance with the provisions of the Regulations."

15. In view of the aforesaid in-built mechanism of the provisions of the Act read with Rules and the statement made in the aforesaid affidavit-in-reply, it cannot be said that there is no *quid pro quo* as sought to be canvassed nor can it be said that fee imposed has no co-relation with the services to be rendered. If the development authority has to control the development and has to permit development in the manner as provided in the development plan, it would be required for the development authority to scrutinise the proposal for development. At the time when the proposals are submitted, it would also require for the authority to scrutinise the documents submitted including that of visit of the site, construction whether has been made in accordance with the plan submitted or not and other incidental aspects for ensuring that no development is made in contravention to the plan submitted for development, and consequently, in contravention of the development plan so prepared and sanctioned by the State Government. The security deposit, in any case, is relatable to the deposit by way of assurance and upon condition so specified or compliance so made, such deposit may be refundable also. Similarly, development fee or charges so collected for permitting development in any area is to be utilised for development of the entire area which is declared as separate area. Therefore, when the Act itself provides in-built mechanism coupled with the above-referred stand taken on behalf of the authority, it cannot be said that fee has no co-relation or there is no *quid pro quo qua* fee or charges so imposed.

16. An attempt is made by learned Counsel for the original petitioners to contend that there must be facts and figures for upholding the validity of the action for imposition of fee cannot be countenance and accepted for two reasons; one is that it was not the case where the fee was already imposed and it was enhanced or increased, but it is a case where the authority has been constituted for the first time and is yet to begin with rendering of the services in the development area. When establishment or functioning for discharging of various services to be rendered as per the scheme of the Act read with Rules by the development authority, it is not must that there must be facts and figures so demonstrated before the Court for justifying quantum of fee imposed. Second reason is that the Act by express provisions provides and speaks for scrutiny fee and development charges. As observed earlier, in-built mechanism provides for collection of scrutiny fee and development fee and its utilisation towards controlling development and permitting development of the development area in accordance with the plan. It also provides for various facilities and infrastructure to be created in the development area by utilisation of the development charges or fee. Therefore, when the Act makes express provisions for imposition of fee, it cannot be said that even in a case where the authority is established for the first time and has imposed the fee for the first time, all the facts and figures must be before the Court before upholding the validity of the action for imposition of fee. Hence, the contention cannot be accepted.

17. Learned Counsel for the original petitioners also made an attempt to support the reasons recorded by the learned Single Judge in the impugned order contending that since no reasons are mentioned in the notification for levy of maximum rate of development charges prescribed, the action can be said as without proper application of mind or arbitrary and illegal.

18. We are not in agreement with the view taken by the learned Single Judge that it is required for the authority to state the grounds and reasons for levying of maximum rate of development charges prescribed by the provisions of the Act. The notification will speak for the decision to impose fee and the grounds are not as such required to be mentioned. In any case, merely because the grounds are not mentioned or reasons are not mentioned in the notification, it cannot be said that *per se* the notification would be bad in law.

19. It further appears that another aspect which weighed to the learned Single Judge was that various facets for distinguishing uses of the land are not taken into consideration by the authority while taking the decision for imposition of fee and it was further considered by the learned Single Judge that fee is sought to be imposed with retrospective effect. In our view, it was not the matter where the fees were sought to be imposed

or collected with retrospective effect because it was not the case where the construction was made or development was made by the petitioning company after sanction was obtained by the competent authority. When the area was already included in the development area and for development of such area when there was already separate authority constituted for permitting development, the Gram Panchayat had no authority with it to grant any sanction including that of compound wall. When the petitioning company had approached to the development authority *i.e.* H.A.D.A., they had not granted sanction and it could be said that the same was declined on the ground that the Draft Development Plan was yet not prepared. Under the circumstances, if the construction so made was without there being any valid sanction in law of the competent authority, and thereafter, when the development fee and the scrutiny fee are imposed, it cannot be said that the same is sought to be collected with retrospective effect. On the contrary, if the matter is strictly considered, one can take a view that the construction was unauthorised and unlawful since no sanction was granted by the H.A.D.A. Not only that, but the H.A.D.A., time and again, had directed the petitioning company to stop construction. In spite of the same, the petitioning company continued with the construction. Therefore, it was a case where the construction was made without there being sanction of the competent authority and in spite of the intimation so made for stoppage of the construction by the competent authority, the construction was made. The aforesaid aspect is also stated by the petitioners in the memo of the petition itself that sanction was not granted by the H.A.D.A. and intimations were given for stoppage of the construction. Under these circumstances, when the construction was not with prior sanction, such may invite two consequences, one may be for demolition of construction since the same was unauthorised and another may be for regularisation of the construction. In a case where the construction is regularised, it has impact for alleged breach *qua* development of the area. It can be said that at the time when the regularisation is to be made subject to fulfilling of the conditions that the construction is not in contravention of the development area, impact-fee may be collected if it is so expressly provided by the regulation. Instead of the words "impact-fee", the regulation in the present case has used the word "premium". Under the circumstances, it can be said that by virtue of the regulation providing for collection of premium, lesser harsher consequence is provided in comparison to demolition of construction since no sanction was granted. Under these circumstances, it appears that the premium so prescribed is to be considered and examined as if impact-fee imposed for the purpose of regularisation of construction subject to condition that construction so made without there being any sanction is not in contravention to the development plan.

20. We shall now examine further reasons which have weighed to the learned Single Judge for declaring levy of fee and premium as unauthorized and bad in law.

21. As observed earlier, as per the scheme of Sec. 99 read with Sec. 100 of the Act, different uses of the land have role to play for the purpose of imposition of development charges. Section 100 of the Act, as observed earlier, provides for four broad categories *i.e.* (i) industrial, (ii) commercial, (iii) residential, and (iv) miscellaneous. If the impugned notification is considered in light of the scheme of the Act, it has differently classified the land included in the development area for the purpose of development fee. The schedule provides are as under :

(i)	Residential	Rs. 45,000/-	per hectare
(ii)	Commercial	Rs. 30,000/-	per hectare
(iii)	Industrial	Rs. 50,000/-	per hectare
(iv)	Other use	Rs. 40,000/-	per hectare

22. The aforesaid rates are for the open land. Whereas for the constructed area, the rates provided are as under :

(i)	Residential	Rs. 13/-	per square metre
(ii)	Commercial	Rs. 15/-	per square metre
(iii)	Industrial	Rs. 15/-	per square metre
(iv)	Other use	Rs. 12/-	per square metre

23. Therefore, as such, classification so identified by the statute has been taken into consideration by the authority while imposing development charges. Under these circumstances, it is not possible for us to agree with a view taken by the learned Single Judge that unequal are treated equal in the matter of levying and imposition of fees by the authority. It appears that the learned Single Judge has considered different classifications of the some portions of land on the basis of availability of water supply, electric supply, sewerage, location, nearby road and width of the road available to such land and the learned Single Judge has further observed that if the flat rate is prescribed by such authority for the entire use of the land in one category without considering different parts and different uses, the same could be said as illegal. With respect, we find that such microscopic classification would not be falling under the judicial scrutiny of this Court when any fee, by way of subordinate legislation, is imposed by the competent authority in exercise of its quasi-legislative power of subordinate legislation. The Act does expressly provide broadly for classification and that too on the basis of use of the land or development sought to be made over the said land. Such classification has nexus with the use of the land and it has

no nexus with the location of the land. Further, when the Act does not provide for separate classification on the basis of the separate location of the land, levy would not be bad merely because such aspect of classification is not considered by the authority while exercising the power for subordinate legislation. The scope of judicial scrutiny to any subordinate legislation when this Court has to exercise the power under Art. 226 of the Constitution is by now well settled. The subordinate legislation would be *ultra vires* if the authority has exceeded the power or has transgressed the power not otherwise provided by the parent Act. Such aspect is unavailable inasmuch as the Act does provide for power for levying of fee and the development charges. On the aspect of classification also, when the Act classifies different parcels of lands on the basis of the use reading further classification on the basis of location of the land would be reading the provisions in the Act which does not exist and in our view, such normally would be outside the scope of jurisdiction of this Court under Art. 226 of the Constitution when any subordinate legislation is brought under challenge contending *ultra vires* to the power or to the Constitution. Even, for testing subordinate legislation keeping in view Art. 14 of the Constitution, the Court would consider broad parameters and examination in microscopic manner is neither available nor can be undertaken. Further, in any case, the ground not provided by the Legislature for different classifications of the land for imposition of different fees, cannot be considered as the base for recording conclusion that classification has not been properly made, and therefore, if levying of fee would not meet with the test of Art. 14 of the Constitution. In the same manner, it cannot be said that separate classification is to be made by way of sub-classification of the land for the purpose of collection of fees like that of place where the actual manufacturing process is conducted, pieces of land which is not being used exclusively for actual manufacturing process etc. which is considered by the learned Single Judge at Paragraph 18 of the judgment. In these circumstances, we find that classification so made in the subordinate legislation for imposition of fee is not in contravention to the scheme of the Act nor can be said as not meeting with the test of Art. 14 of the Constitution as contented by the original petitioners before the learned Single Judge.

24. The scrutiny fee as provided by Regulation 3.3 reads as under :

"3.3. *Scrutiny Fee :-* A person applying for a permission for carrying out any development work on any land shall with his application pay to the Authority scrutiny fees at the following rates :

(i) Re. 1/- per sq.mt. of built-up area of all floors of the intended development or part thereof and 50 paise per sq.mt. of plot area of the building unit subject to minimum of Rs. 300/- (Rupees Three Hundred only) for residential uses and double the above rate for the uses other

than residential except for development for hospital, dispensary, school or college or a place of worship to be constructed by public charitable trust, registered under Public Trusts Act, 1950.

(ii) For revalidation of lapsed development permission Rs. 300/- (Rupees Three Hundred only) for applications with prescribed time-limit and Rs. 50/- (Rupees Fifty Only) as penalty per month beyond prescribed time-limit. And for revision of development permission Rs. 50/- (Rupees Fifty only).

(iii) In case of mining, quarrying and brick kiln operations the fees will be as under :

(a)	Mining, quarrying and brick kiln operations	Rs. 500/- per 0.4 Hect. or part thereof and a maximum of Rs. 2500/-
(b)	Brick-kiln (with chimney)	Rs. 25/- per 0.1 Hect. or part thereof and a maximum of Rs. 500/-
(c)	Processing of Sagol, lime etc. without construction.	Rs. 25/- per 0.1 Hect. or part thereof and a maximum of Rs. 250/-
(d)	Renewal of mining, quarrying, brick kiln operations	Rs. 50/- for one year.
(e)	Brick kiln (without chimney)	Rs. 25/- for one year.
(f)	Processing of Sagol, lime etc. without construction	Rs. 10/- for one year."

25. The aforesaid shows that scrutiny fee is towards permission for carrying out any development work over any land. If the aforesaid provisions of the scrutiny fee are considered in light of the subsequent provisions of the Regulation, as per Regulations 3.4 to 3.6, it cannot be said that the scrutiny fee proposed to be levied has no co-relation to the services to be rendered. It will be required for the authority to scrutinise all the aspects for ensuring that permission is granted for development to the persons so entitled for and the development so proposed is not in contravention but in consonance with the development plan and no development is made even after getting permission in contravention to the plan submitted for development and so approved by the authority. Regulations 3.4 to 3.7 and 4 to 4.4 elaborately deal with various aspects to be considered for controlling and permitting development in the area. The same for ready reference is reproduced as under :

3.4. The following particulars and documents shall be submitted along with the application *viz*. -

(I) (a) The applicant shall submit satisfactory documentary evidence of his right to develop or to build on the land in question including extract from the Property Register for City Survey lands or an extract from the Record of Rights for Revenue Survey Number lands as the case may be, provided that the Chief Executive Authority may dispense with this requirement in the cases where he is satisfied regarding the ownership of land on the basis of any other documentary evidence or proof produced by the applicant.

(b) He shall also submit a certified copy of the approved sub-div-lay-out of final plot from the concerned authority or latest approved sub-div/ lay-out of City Survey numbers or Revenue numbers from relevant authority as the case may be showing the area and measurements of the plot or land on which he proposes to develop.

(II) A site plan (in triplicate) of the area proposed to be developed to a scale not less than 1 : 500 as the case may be, showing the following details wherever applicable :

(i) The boundaries of the plot.

(ii) The positions of the plot in relation to neighbouring streets.

(iii) The name of the streets in which the plot is situated.

(iv) All the existing buildings and other development standing on, over and under the site.

(v) The position of building and of all other buildings and constructions which the applicant intends to erect.

(vi) The means of access from the street to the building or the site and all other building and construction which the applicants intend to erect.

(vii) Yards and open spaces to be left around the buildings to secure free circulation of air, admission of light and access.

(viii) The width of street (if any) in front and of the street at the side or rear of the building.

(ix) The direction of north point relative to the plan of the buildings.

(x) Any physical features such as trees, wells, drains, etc.

(xi)(a) Existing streets on all sides indicating clearly the regular line for streets if any prescribed under law and passing through the building units.

(xi)(b) The location of the building in the plot with complete dimensions.

(xi)(c) The area within the regular line of the street not to be built upon but to be added to the street hatched in green together with its measurements.

(xii) Area classified for exemption of built-area calculations.

(xiii) A plan indicating parking spaces, if required under these regulations.

(IV) A detailed plan (in triplicate) showing the plans, sections and elevations of the proposed development work to a scale of 1 : 100 showing the following details wherever applicable :

(a) Floor plans of all floors together with the covered area, clearly indicating the size and spacing of all framing members and sizes of rooms and the position of staircases, ramps and lift wells.

(b) The use of all parts of the building.

(c) Thickness of walls, floor slabs and roof slabs with their materials. The Section shall indicate the height of building and height of rooms and also the height of the parapet, and the drainage and slope of the roof. Atleast one Section should be taken through the staircase.

(d) The building elevation from the major street.

(e) The level of the site of the building the level of lowest storey of building in relation to the level of any street adjoining the curtilage of the building.

(f) Terrace plan indicating the drainage and slope of the roof.

(g) The north point relative to the plans.

(V) In the case of layout of land or plot :

(a) A site-plan (in triplicate) drawn to a scale not less than 1 : 500 showing the surrounding lands and existing access to the land included in the layout plan.

(b) A layout plan (in triplicate) drawn to a scale of not less than 1 : 500 showing.

(i) Sub-divisions of the land or plot with dimensions and area of each of the proposed sub-divisions and their use according to these Regulations.

(ii) Width of the proposed streets and internal roads,

(iii) Dimensions and areas of consolidated open plot and open space provided for under these regulations.

(VI) Certificate of supervision : Certificate in the prescribed form enclosed in Appendix-B by the licensed Architect/Engineer or Surveyor undertaking the supervision shall be submitted.

(VII) Full information should be furnished in Form No. 3 and Form No. 4 as the case may be along with and on the plans.

Form No. 3 and Form No. 4 are given in Appendix-C and D respectively.

(VIII) The applicant shall also submit copy of N.O.C. from relevant Authority as per Regulation No. 4.2, wherever applicable.

3.5 The following notations generally shall be used for plans referred to Regulation 3.4 (III), (IV) and (V) :

Sr. No.	Item	Site Plan	Bldg. Plan
1.	Plotline	Thick black	Thick black
2.	Existing street	Green	-
3.	Future street, if any	Green dotted	-
4.	Permissible lines	Thick dotted	-
5.	Open space	No colour	No colour
6.	Existing work	Blue	Blue
7.	Work proposed to be demolished	Yellow hatched	Yellow hatched
8.	Proposed work	Red	Red
9.	Drainage and sewerage work	Red dotted	Red dotted
10.	Water supply work	Black dotted	Black dotted

3.6. *Plan and specifications to be prepared by Licensed Architect/Engineer or Surveyor :-* The plans and particulars prescribed under Regulation No. 3.4 above shall be prepared and duly signed by a licensed Architect/Engineer or Surveyors. The procedure for Registration of Architect/Engineers or Surveyors shall be as laid down in these Regulations.

7. If the plans and informations given as per Regulation Nos. 3.2, 3.3 and 3.4 do not give all the particulars necessary to deal satisfactorily the case, the application may be liable to be rejected.

4. GENERAL REQUIREMENT FOR DEVELOPMENT :

4.1. Any plan for the construction of any structure or building or any part thereof should provide set-back and margins from the boundary of the plot or the road line as the case may be as required under these regulations. The road line shall be determined as per the maximum width of the road or street or Development plan proposals or the Town Planning Schemes.

4.2. *Development of any land in the Hajira Development Area :-*

(a) Situated and abutting on any of the classified roads of the State Government and the Panchayats shall be regulated and controlled by the building line and control line prescribed under the Government in the Revenue Department Resolution No. JPV/1065/27339/A dated 1-3-1967 and as amended from time to time :

Provided that the building line prescribed in the above resolution of the Revenue Department and the marginal distances to be kept open or set-backs to be observed on the road side prescribed in the Development Plan Regulations or in the Town Planning Scheme Regulations whichever is more shall be enforced.

(b) Whose right of user is acquired under the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 as amended from time to time shall be regulated and controlled according to the provisions of the said Act, in addition to these regulations.

(c) Situated in the vicinity of an oil well installed by Oil and Natural Gas Commission shall be regulated and controlled according to the provisions of the Indian Oil Mines Regulations, 1933 in addition to these regulations.

(d) Situated in the vicinity of the Grid Lines laid by the Gujarat Electricity Board under the Electricity Rules, 1956 shall be regulated and controlled by the horizontal and vertical clear distances to be kept to sky.

(e) In restricted zone near the Air Port, constructions of Building Hall be regulated by the Civil Aviation Departments Regulations in addition to these regulations.

(f) Situated in the vicinity of the Railway Boundary shall be regulated and controlled according to the Standing Orders/Instructions of the Railway Authorities in force and as amended from time to time.

(g) Situated anywhere in the Hajira Area Development Authority area shall be subject to provisions of Gujarat Smoke Nuisance Act, 1963.

(h) Situated anywhere in the Hajira Area Development Authority area shall be subject to provisions of Water (Prevention and Control of Pollution) Act, 1974.

(i) Situated anywhere in the Hajira Area Development Authority area shall be subject to provisions of Air Pollution Control Act, 1981.

4.3. *Development work to be in conformity with the regulations :*

(a)(i) All development work shall confirm to the Development Plan proposals and the provisions made under these regulations. If there is a conflict between the requirement of these regulations and Town Planning Schemes Regulations, if any in force, the requirements of these regulations shall prevail.

(ii) The development work when completed shall not be used for any purpose except for the sanctioned use or such as can be permitted under these regulations.

(b) *Change of use :* No building or premises shall be changed or converted to a use other than the sanctioned use without prior permission of the concerned authority in writing. Change of use not in conformity with these regulations shall not be permissible.

4.4. *Use to be in conformity with zoning regulations :*

(a) The development work for which the permission is sought should confirm to the zoning under the development plan and the land use provisions prescribed under these regulations.

(b) In the case of any area not specifically designated for any land-use zone in the development plan, the zone shall be the same as the predominant use zone of the surrounding area :

Provided that and subject to the provisions of the Gujarat Town Planning and Urban Development Act, 1976, any lawful use of premises existing prior to the date on which the final development plan comes into force, may be retained with the permission of the authority, provided further that such use is terminated for any reasons whatsoever, any new development on such land or building shall be in conformity with these regulations."

26. In view of the express provisions made in the Regulations on the aspect of services to be so rendered for various facets of scrutiny to be undertaken by the authority before the decision is taken for grant of permission, it cannot be said that action for imposition of fee has no co-relation to the services to be rendered, and therefore, would not meet with the test of *quid pro quo* as sought to be canvassed.

27. Next challenge is to the security deposit as provided by Regulation 5.3 which reads as under :

"5.3. *Security Deposit :-* The applicant shall deposit and keep deposited as security deposit an amount at the rates mentioned below for the due observance and performance of the conditions of the Development permission. The amount shall be deposited on intimating before issue of Development Permission.

(i) Rs. 3/- (Rupees Three Only) per sq.mt. of total built-up area of all floors of the proposed development (construction).

(ii) The amount of security deposit shall be paid in cash only.

(iii) Government, Semi-Government, local authorities and public charitable trusts registered under the Public Trusts Act, 1950 are exempted from this provision.

(iv) These rates are liable to be revised every two years from the date on which these rates come into force.

(v) The security deposit shall be refunded without interest after grant of the occupancy certificate.

(vi) The security deposit shall be forfeited either in whole or in part at the absolute discretion of the authority for breach of any of the provisions of these regulations and conditions of the development permission. Such forfeiture shall be without prejudice to any other remedy or right of the authority."

28. As nomenclature itself provides further with the express provisions of the Regulation, the security deposit is for ensuring that the construction is made in accordance with the plan so sanctioned and occupation is made in the premises constructed after occupation certificate and such security

deposit is to be refunded after grant of occupation certificate. Such deposit has also co-relation with the services to be rendered for ensuring proper compliance of the condition imposed for grant of permission for development. Hence, it cannot be said that the fee imposed by way of security deposit though as such is not the fee, has no *quid pro quo* or no co-relation with the services to be rendered. We need to record that such deposit in any case is to be refunded if there is proper compliance of various conditions of permission granted and other regulation concerned.

29. Next aspect is *qua* challenge to the fee imposed by way of premium under Regulation 5.8. Regulation 5.8 reads as under :

"5.8. *Development through in accordance with the General Development Control Regulations but without prior permission or in deviation of the granted development permission* :-

In the case where development has already been started or completed on any site on or after 30-8-1989 and for which Development permission in writing of the Authority is not obtained, but where this development on a site may be in accordance with the provisions of these regulations, the 'development permission' for such works on site without the prerequisite permission or development though in accordance with the regulations but in deviation of the granted 'development permission' may be granted by the competent authority on the merits of each case. For such development works over and above such other charges/fees as may be otherwise leviable, premium shall be charged as per following rates :

Sr. No.	**Type of Development**	**Rate of premium as % of the cost of development carried out**	
		For residential development	**For development other than residential**
1.	Development in accordance with General Development Control Regulations started before obtaining written permission though applied for	1.0%	2.0%
2.	Development though in accordance with the General Development Control Regulations, but not applied for	1.5%	3.0%
3.	Development though in accordance with the General Development Control Regulations,	2.0%	4.0%

	but in deviation of the granted development permission.	
4.	Brick kiln, Mining, Quarrying and all other open land	25 paise sq.mt. of portion of land in which development is made or has started.

NOTE :

1. For Residential Development minimum premium will Rs. 250/-.

2. For Development other than Residential, minimum premium will be Rs. 1,000/-.

3. For Charitable Trust relaxation in premium shall be made by Chief Executive Authority taking into consideration is merits purpose of trust, type of development etc. after recording reason thereof.

4. Norms for assessing cost of development carried out for different type of constructions shall be, as may be prescribed by the Authority from time to time."

30. The aforesaid Regulation makes it clear that the same is to apply in case of development already made in accordance with the General Development Control Regulations, but without prior permission or in deviation of the granted development permission. If construction is made without prior permission, it may call for demolition of construction or removal of construction since there was no permission. However, in order to see that construction though made without prior permission but is in accordance with the provisions of the Regulation, instead of taking harsher action of demolition of the same, the Regulation provides for levy of premium in the nature of impact-fee. If Regulation 5.8 is held to be *ultra vires* or is invalid, consequence which may be required to be faced by the petitioners would be that no Regulation will be available for regularisation of the construction already made without prior permission of the development authority. The Act provides that if any development is made without prior permission, such is required to be removed in accordance with the provisions of Secs. 36 and 37 of the Act. Therefore, if there is no Regulation available for regularising of the development already made without prior permission, the aforesaid statutory provisions of Secs. 36 and 37 of the Act shall operate. Consequently, construction made without prior permission would be required to be removed. We are unable to appreciate the conduct of the petitioning company for challenging Regulation 5.8 which may *prima facie* goes against them if statutory provisions of Secs. 36 and 37 of the Act are enforced. Since it is not even the case of the original petitioners that any development or construction was made without prior permission of the authority, if challenge is accepted as it is, as observed earlier, consequence in law would be that the authority will be required to take action for demolition of

construction and the development already made will be required to be removed even if they are in accordance with the development plan since prior permission was not obtained. In our view, Regulation 5.8 is to be operate as shield to those who have made construction or developed the land located in the area without prior permission. If any person has made unauthorised construction without prior sanction of the competent authority or construction so made was without prior permission, he would be required to pay premium if he is so desirous to see that action for making construction is regularised. The aforesaid aspect is also apparent from the affidavit-in-reply filed, more particularly, the Paragraphs reproduced hereinabove, on behalf of the authority. If validity of Regulation 5.8 is tested keeping in view that the same is by way of regularisation of construction made without prior permission, there will always be additional fee or charge to be paid by those persons who have made construction or developed the property without prior permission. When the authority for the purpose of getting permission has decided to collect development fee and scrutiny fee including scrutiny deposit, charging of impact-fee by way of premium cannot be said to be arbitrary as sought to be canvassed. Learned Single Judge has proceeded on the basis that there is no power available for imposition of premium. It is true that there is no express power provided under the Act like scrutiny fee and development charges to be imposed. However, the Act speaks for framing of the Regulations by the Area Development Authority and sanction to be obtained for giving effect to such Regulations, one may contend that Regulation 5.8 may run counter to the provisions of Secs. 36 and 37 of the Act, since the Act provides for removal of development, but challenge to Regulation 5.8 is not on that ground, and therefore, we leave the matter at that stage without observing further. However, the fact remains that preparation of Draft Development Plan and sanction took pretty long time and in the meantime, if development is already made not in contravention to the development plan and the authority has exercised the power for regularisation of development already made without prior permission on payment of particular premium, instead of taking harsher action of demolition of construction, the challenge cannot be heard from the mouth of the person who has made construction like the petitioning company without prior permission of the competent authority. Further, if one has to make development after sanction of the Draft Development Plan and after approval of the Regulations, he would be required to pay fee for development including scrutiny-fee. As against the same, if the higher rates have been provided, for those who have acted in breach of the law, for the purpose of regularisation of construction by way of premium, it cannot be said that the rates so prescribed are arbitrary on the ground as sought to be canvassed.

31. In view of the aforesaid, we are not in agreement with the view taken by the learned Single Judge for allowing of the petitions, but we find that challenges made by the petitioners in the petitions were without merit and the petitions were required to be dismissed. Hence, the judgment and order of the learned Single Judge is set aside and both the petitions shall stand dismissed.

32. On account of the interim order passed and ultimately final order passed by the learned Single Judge in the petitions, consequence has arisen that though levy of fee and the development charges etc. were lawful, it has remained unpaid. There is no express provision made for chargeability of interest for unpaid security fee or unpaid premium or unpaid security deposit. However, there is express provision made under Sec. 101 of the Act for chargeability of interest for unpaid development charges. Section 101 of the Act provides for recovery of development charges with interest at the rate of 6% *per annum* from the date on the amount has remained unpaid. We find that the same rate can be made applicable even in respect of unpaid security fee or unpaid security deposit or unpaid premium. Consequently, on account of disposal of the petitions and since the interim relief was enjoyed by the petitioners pending the petitions before the learned Single Judge, and thereafter, the original petitioners have also got refund of the amount with accrued interest, we find it proper to observe that the competent authority *i.e.* H.A.D.A. or if H.A.D.A. is dissolved, the authority which has acquired the right and property of the H.A.D.A. shall be at liberty to recover the amount from the petitioning company all the unpaid fees with interest at the rate of 6% *per annum* until the amount is actually realised with accrued interest.

33. Further, considering the facts and circumstances, we find that on account of challenge made by the petitioners to levying of fee, and thereafter, as levy was declared to be invalid, other persons have also not paid fee so imposed, hence it is observed that it would also be open to the authority to recover the fee in accordance with law of course after giving reasonable time to the persons concerned for payment of the said amount.

34. In view of the conduct of the petitioners of proceeding with the construction in spite of prohibitory orders, and thereafter, creating stalemate for recovering of fee for the larger area of seven villages on account of previous litigation, it would be appropriate to impose cost also.

35. Hence, while dismissing the petitions, we find it proper to impose the cost and as two matters are involved, the cost of Rs. 50,000/- each, total Rs. 1,00,000/- shall be paid by the original petitioners within a period of four weeks from today and the said amount shall be deposited with this Court. Out of the said amount of cost, Rs. 50,000/- shall be paid to the

appellant-State of Gujarat and Rs. 50,000/- shall be paid to the Gujarat State Legal Services Authority.

36. After pronouncement of the order, Mr. Nanavati, learned Senior Advocate appearing with Mr. Gandhi prays for suspension of operation of the order for sometime so as to enable his client to approach the higher forum. When it was further inquired with learned Counsel for the original petitioners respondents herein that whether to show *bona fide,* his client is ready to deposit the amount with accrued interest or part thereof. However, it was stated that there is no instruction for deposit of the amount. Under these circumstances, we find that when levying of fees is held to be valid in law, it would not be a case to suspend operation of the order. Hence, the said prayer is declined.

(NRP) *Petition dismissed.*

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SPECIAL CRIMINAL APPLICATION

Before the Hon'ble Mr. Justice G. R. Udhwani

VASANTKUMAR THAKARJI THAKKAR v. STATE OF GUJARAT & ORS.*

Electricity Act, 1910 (9 of 1910) — Sec. 56(2) — Criminal Procedure Code, 1973 (2 of 1974) — Sec. 197 — Criminal complaint against employees of erstwhile G. E. Board for forcibly taking away meter etc. — Held, no cognizance of offence can be taken without sanction of competent authority against employees of electricity company for their acts done in good faith in discharge of duty — Order by lower Court confirmed. (*See* Para 8)

વીજ અધિનિયમ, ૧૯૧૦ — કલમ ૫૬(૨) — ક્રિમિનલ પ્રોસીજર કોડ, ૧૯૭૩ — કલમ ૧૯૭ — અગાઉના જી.ઈ. બોર્ડના કર્મચારીઓ વિરુદ્ધ બળજબરીથી મીટર લઈ જવા બાબતની ફોજદારી ફરિયાદ — ઠરાવવામાં આવ્યું કે, પોતાની ફરજ બજવણી દરમિયાન શુભ આશયથી લઈ જવાયેલ મીટર બાબત વીજ કંપનીના કર્મચારીઓ માટે સક્ષમ અધિકારીની મંજૂરી વગર, કોઈ ધ્યાનમાં લેવા જેવો ફોજદારી ગુનો નથી — નીચલી અદાલતનો હુકમ, માન્ય રાખવામાં આવ્યો.

Cases Distinguished :

(1) *Jawahar Karunashanker Adhararyu v. State of Gujarat,* 1996 (1) GLR 747

Harin P. Raval, for the Applicant.
K. P. Raval, Addl. P.P., for Respondent No. 1.
Rule Served for the Respondent No. 2.
Ms. Manisha Lavkumar, for Respondent No. 3.

G. R. UDHWANI, J. None present for the parties when called out for the second time, except Mr. K. P. Raval, learned A.P.P., for respondent No. 1.

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*Decided on 8-3-2013. Special Criminal Application No. 569 of 2008.