

BANGALORE INTERNATIONAL AIRPORT AREA PLANNING AUTHORITY A

v.

BIRLA SUPER BULK TERMINAL (NOW A UNIT OF ULTRA
TECH CEMENT LTD.) AND ORS. B

(Civil Appeal No. 9684 of 2011)

NOVEMBER 27, 2018

[R. BANUMATHI AND INDIRA BANERJEE, JJ.]

*Karnataka Town and Country Planning Act, 1961: ss. 14, 15
and 18 – Levy of betterment fee u/s. 18 – Sustainability of – On
facts, appellant constituted as the planning authority for a local
planning area – Respondent No.1 sought permission from the
appellant for construction of Bulk Cement Terminal – Land allotted
by Karnataka Industrial Areas Development Board-KIADB to
respondent no. 1 – Appellant sought respondent No.1 to pay
betterment charges, building construction charges etc. under the
KTPC Act – Writ petition by respondent no. 1 and 2 that appellant
had no authority to demand any development charges since lands
were allotted in favour of respondent no. 1 by the KIADB – Writ
petition dismissed – In appeal, the Division Bench held that for the
industrial plots allotted by KIADB, the change of land use and the
development thereof comes under the purview of the special
enactment KIAD Act and not under the general law of KTPC Act
and levy of betterment fee u/s. 18 of the KTCP Act is not sustainable
– On appeal, held: The object of KIAD Act is to make special
provisions for securing the establishments of industrial areas in the
State and to generally promote the establishment and orderly
development of the industries whereas the KTCP Act is for regulation
of planned growth of land use and development and for the making
and execution of town planning schemes in the State – Both the
Acts-KIAD Act and KTCP Act operate in different fields and the
maxim Generalia Specialibus Non Derogant is not applicable – There
is nothing in the provisions of the KTCP Act to exclude or exempt
the lands covered by the KIAD Act – Development activities including
the industrial areas fall within the scope of the appellant-Authority
and that the first respondent while obtaining the approval from the*

A *appellant-Authority for its plan is bound to pay the betterment charges, road cess and other charges as per the laws – Thus, the order passed by the Division Bench of the High Court is set aside – First respondent to pay the charges to appellant with 6% interest – Karnataka Industrial Areas Development (KIAD) Act – Maxims.*

B **Allowing the appeal, the Court**

C **HELD: 1.1** By careful reading of the provisions of both the Acts, Karnataka Town and Country Planning (KTCP) Act, 1961 and Karnataka Industrial Areas Development (KIAD) Act it is seen that the object of KIAD Act is to make special provisions for securing the establishments of industrial areas in the State and to generally promote the establishment and orderly development of the industries. On the other hand, KTCP Act is for regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State. Both the Acts i.e. KIAD Act and KTCP Act operate in different fields. Considering the objects of both the enactments, there is no merit in the plea of the fifth respondent that once a land is acquired for the purpose of industries under the KIAD Act and made over to the Board, the use of the land becomes ‘use for industrial purpose’ and no further permission for change of use of land by KTCP or any other authority is required. [Para 22][649-B-D]

F **1.2** From a combined reading of Section 18 with Section 2(1-c) of KTCP Act, it is clear that the levy of prescribed fee under Section 18 of the Act is not merely for change of land use but also for development of land or building. The language of expression used in Section 18 that “*permission for change of land used...*” and “*development of land or building..*” is to be interpreted in the light of the object of KTCP Act as enunciated in the Preamble. [Para 23][649-F-G]

G **1.3** When the government of Karnataka, Finance Department and other departments and also the Commissioner for Industrial Development and other departments have participated in the said meeting and were all parties to the decisions as regards the question of levy of fees by KTCP, it is not open to KIADB to resile from the minutes and put forth claim

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contrarily. Having been a party to the discussion in the meeting held on 04.12.1999, the State of Karnataka is also not justified in contending that the lands in question are included in the industrial area declared by the State Government and hence, not bound to pay the development fee under Section 18 of the Act. [Para 25][651-E-G]

1.4 Section 14 read with Section 18 of the KTCP Act clearly connotes that the Planning Authority is entrusted with the function of granting licence to put up construction on the land including the land acquired and allotted by the Board under KIAD Act. This is also clear from the provisions contained in the non-obstante clause in Section 74-M of the KTCP Act which declares that the provisions of the said Act and the Rules, Regulations and Bye-Laws made thereunder shall have effect notwithstanding anything inconsistent contained in any other law. There is nothing in the provisions of this Act to exclude or exempt the lands which are covered by the KIAD Act. [Para 27][652-F-G]

1.5 The High Court, on the one hand, took the view that Sections 14, 15 and 18 of KTCP Act are not applicable to the industrial area which is governed by KIAD Act and on the other hand, held that for compliance of the provisions of Sections 14 and 15 for all the establishment of the industrial unit, the allottee has to seek approval of the Planning Authority constituted under KTCP Act and KTCP is to scrutinise the plan and other documents so as to ensure that the establishment of the industrial unit by the allottee in the industrial area is in conformity with the Zonal Regulations etc; but KTCP is not to levy betterment fee. The findings of the High Court are self-contradictory to each other. [Para 29]653-H; 654-A-B]

1.6 The Planning Authority constituted under KTCP Act is entrusted with the functions of granting approval for any development on the land within its jurisdiction including the land acquired and allotted by the Board under KIAD Act. Per contra, the enactment of KIAD Act is to make special provision for securing the establishment of the industrial area in the State and for that purpose to establish Industrial Areas Development Board. The provisions of both the Acts make the intention of the legislature very clear. If there are two possible interpretations of

A an enactment, one should avoid the construction which would
reduce the legislation to futility and should rather accept the
broader interpretation. A statute is designed to be workable and
the interpretation thereof by the court should be to secure that
object. In so far as the “industrial area” allotted by KIADB, the
B interpretation given by the High Court to the provisions of KTCP
Act would render the existence of the Planning Authority like
the appellant to futility. While on the one hand, the High Court
has directed the first respondent to obtain permission from the
Planning Authority under KTCP Act and that the appellant-
C Authority to scrutinise those plans only to ensure that they are
in conformity with the Regulations etc. At the same time, the
High Court is saying that the appellant-Authority cannot collect
the betterment fees. Such findings are contradictory to each other
and cannot be sustained. [Para 30][654-C-H]

D 1.7 The High Court held that KIAD Act being a Special
Act, the same will prevail over KTCP Act which is a General Act.
KTCP Act is applicable to all the developmental activities in
respect of any land coming within the area of Outline Development
Plan (ODP) and the lands in question even though situated in
industrial area comes within the area of ODP of the Planning
E Authority. The developmental activities over the said land have
to be carried on only with the permission of the Authority and
both the enactments have to be harmoniously construed so as to
give effect to each of the Acts enacted by the State Government.
[Para 31][654-G-H; 655-A]

F 1.8 Rule of interpretation says that a statute is best
interpreted when it is known why it was enacted, which can be
seen from the preamble of an Act. As per the preamble of the
KIAD Act, it is an Act to make special provision for securing the
establishment of industrial areas in the State of Karnataka and
generally to promote the establishment and orderly development
G of industries therein. KTCP Act on the other hand, was enacted
to provide for the regulation of planned growth of land use and
development and for the making and execution of town planning
schemes in the State of Karnataka. Thus, considering the
legislative intent of the two enactments, it is seen that there is
nothing in the KIAD Act to destroy the authority of the appellant
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which has its own assigned role to perform under the provisions of the KTCP Act. Considering the object and purpose for which both the Acts were enacted, there is no inconsistency or overlapping between the two enactments and the power of authorities constituted under the Acts. As the areas of operation of KIAD Act and KTCP Act are wholly different, there is no question of applicability of the maxim *Generalia Specialibus Non Derogant*. [Para 32][655-B-E]

1.9 The first respondent has not challenged the jurisdiction of appellant-Authority to levy betterment charges and that the objections that the first respondent has raised were regarding the rate of betterment fee treating the first respondent as commercial establishment and the fact that they are situated in Bengaluru Rural (North) District and not in Bengaluru Urban District. When the first respondent has not raised the objection regarding the jurisdiction/competence of the appellant-Authority to levy betterment fee, the first respondent was not justified in turning around and challenging the powers of the appellant-Planning Authority to levy betterment charges. The High Court, did not properly consider the response of the first respondent and the High Court erred in saying that the role of KTCP is only to scrutinise the application to ensure that the plan is in conformity with the provisions of the KTCP Act and that it cannot levy the fee. [Para 34][656-B-D]

1.10 For obtaining sanction of their plan, the other allottees of industrial plots by KIADB have paid the betterment charges and also the road cess as demanded by the appellant-Authority. When other allottees of industrial plots by KIADB have paid betterment charges and road cess for obtaining sanction of the plan, the first respondent cannot challenge the levy and contend that they are not liable to pay the betterment charges. [Para 35][656-E-F]

1.11 The High Court ignored the important provisions of KTCP–Sections 14 and 15 regarding the development act and the development activities including the industrial areas fall within the scope of the appellant-Authority and that the first respondent while obtaining the approval from the appellant-Authority for its plan is bound to pay the betterment charges, road cess and other

A **charges as per the laws. The Single Judge rightly dismissed the writ petition filed by the first respondent and the Division Bench erred in reversing the same. The impugned judgment of the High Court is set aside. The first respondent is directed to pay Rs.1,48,29,173/- to appellant-Authority with interest at the rate of 6% from the date of the demand, within the stipulated period.**
 B [Paras 36, 37][656-F-H; 657-A-B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9684 of 2011

C From the Judgment and Order dated 21.10.2005 of the High Court of Karnataka at Bangalore in Writ Appeal No. 3688/2002 (LB-RES)

Ms. Kiran Suri, Sr. Adv., S. J. Amith, Ms. Aishwarya Kumar, Dr. (Mrs.) Vipin Gupta Advs. with her for the Appellant.

D Bharat Sangal, Ms. Anindita Deka, Ms. Babita Kushwaha, Ms. Isha Gupta, Devadatt Kamat, Nishanth Patil, Ms. Sneha K. Iyer, Rohit Prasad, Joseph Aristotle, Mrs. Priya Aristotle, Shiva P., Ms. Aruna Hannah Dutta, Ms. Anitha Shenoy, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **R. BANUMATHI, J.** 1. This appeal arises out of the judgment dated 21.10.2005 passed by the High Court of Karnataka at Bangalore in Writ Appeal No.3688 of 2002 in and by which the High Court has set aside the order passed by the Single Judge thereby setting aside the betterment fee levied by the KTCP by holding that the very acquisition under the Industrial Area Development Act involve change of land use and development by KIADB and while so, further levy of betterment
 F fee under Section 18 of the KTCP is not sustainable.

G 2. Brief facts of the case which led to filing of this appeal are that the provisions of Karnataka Town and Country Planning (KTCP) Act, 1961 to provide for regulation of planned growth of land use and development and for making and execution of town planning schemes in
 H the State of Karnataka. The State Government, by virtue of powers conferred under Section 4-A of the KTCP Act, issued Notification No.HUD142 MNX 95 dated 12.01.1996 declaring the area shown in the Schedule to the said notification as ‘Bangalore International Airport Planning Area’ w.e.f. 12.01.1996. On the same day, the State Government issued another Notification No.HUD 142 MSX 95

constituting the appellant as the Planning Authority for the said local A
planning area. The State Government by Notification dated 14.05.1997
added some other villages including the villages in question in
Doddaballapur Taluk in the planning area of the appellant.

3. Respondent No.1 approached the State Government to approve B
a project to establish the Cement Terminal near Bangalore which was
approved by the Single Window Agency by its clearance order dated
29.11.1996. By exercising powers under Sections 3(1) and 1(3) of KIAD
Act, the Karnataka Industrial Areas Development Board (KIADB),
issued a Notification on 03.07.1997 declaring some areas as industrial C
areas. Respondent No.1 was allotted lands by KIADB in Thippapura,
Veerapura, Bashettinalli of Doddaballapur Taluk vide allotment letter
dated 12/13.01.1998. Subsequently, respondent No.1 was asked to take
possession of the said lands vide letter dated 29.05.1998 by KIADB and
accordingly, possession certificate was issued on 16.07.1998 and
respondent No.1 took possession on 16.7.1998.

4. On 8.6.1998, Respondent No.1 applied to Appellant authority D
seeking permission for construction of Bulk Cement Terminal. The
Appellant inspected the spot along with KIADB Special Land Acquisition
Officer, Urban Planning Director and Deputy Metropolitan Commissioner.
By letter dated 17.9.1998, R-1 was informed by the Appellant that on E
inspecting the land once again and being satisfied that there is an approach
road measuring 15 feet to the proposed land, it was decided to approve
the development plan as per Rules. The Appellant also informed
Respondent No.1 to pay betterment charges @ Rs. 75 per sq. mtr.,
inspection charges @ Rs. 150 per hectare, building construction charges,
penalty @ Rs. 150 per hectare and road charges @ Rs. 1 lakh per acre F
totalling Rs. 1,48,29,173/- pertaining to the sanctioning of the Development
Plan consisting of the plans of storage, packing and administrative-office
buildings.

5. Respondent No.1 objected to the demand by a letter dated
16.10.1998 stating that it had already made payment to KIADB towards G
allotment of lands, and therefore, development fee for constructing the
commercial establishment is not necessary. Appellant issued notice dated
08.12.1998 under section 15 (4) of KTCP Act stating that as per Section
15 (1) of the KTCP Act, every development has to be proceeded only
after getting necessary Commencement Certificate from the Appellant.

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A It was stated in the notice that records reveal that no permission has been obtained as required under the provisions of KTCP Act. KTCP asked respondent No. 1 to stop work and discontinue use of the property and to show cause as to why action should not be taken to remove or pull down the work and to restore the land to its original condition.

B 6. Respondents No. 1 and 2 filed Writ Petitions No. 37717-719/1998 dated 14.12.1998 before the High Court challenging the said notice dated 17.9.1998 and notice dated 8.12.1998. Respondent No.1 contended that the appellant has no authority to demand any development charges since the lands in the question were allotted in favour of Respondent No.1 by the KIADB, under the provisions of Karnataka Industrial Areas Development (KIAD) Act. The Single Judge of the High Court dismissed the Writ Petitions holding that in view of the declarations issued under section 4-A of the KTCP Act, the lands in question continue to be within the planning area. The Single Judge further held that when respondent No. 1 itself has submitted to the jurisdiction of the appellant by making an application for sanction of plan and for permission and while so, it is not open for them to say that the appellant has no jurisdiction or authority to demand development charges. The learned Single Judge held that by virtue of the power conferred on the appellant under Section 18, the appellant has rightly demanded the development charges having permitted Respondent No. 1 to use the land for establishment of an industry.

E 7. In the appeal filed by the respondents No. 1 and 2, the Division Bench held that KIAD Act is a special Act enacted for securing the establishment of industries in the State of Karnataka and the industrial area is governed by the provisions of the Act. The High Court further held that for the industrial plots allotted by KIADB, the change of land use and the development thereof comes under the purview of the special enactment KIAD Act and not under the general law of KTCP Act and the provisions of special Law will prevail over the provisions of the general Law. The High Court held that the only requirement for respondent No.1 is to obtain clearance from the appellant to show that the construction of the industrial unit is in conformity with the zonal regulations, etc. and this requirement does not in any way attract the provisions of Section 18 of the KTCP Act so as to empower the appellant to levy conversion fee/betterment fees.

F G H 8. Ms. Kiran Suri, learned senior counsel for the appellant submitted that the High Court erroneously held that Sections 14, 15 and 18 of the

KTCP Act are not applicable to the lands acquired under the KIAD Act. The learned senior counsel submitted that the provisions of KIAD Act mainly deals with the declaration of an area as an industrial area and the acquisition of the lands for the purpose of industrial development and allotment of the said land and there are no provisions in the KIAD Act with regard to the construction thereon or the developmental activities to be carried out in the industrial sites and one has to fall back upon the provisions of the KTCP Act for carrying on any development activities over the said land which brings into action Sections 14 and 15 of the KTCP Act for seeking permission and the power of the Planning Authority to levy the betterment fee under Section 18 of the KTCP Act. The learned senior counsel further submitted that the provisions of KTCP Act govern the entire planning and development of the buildings within the State of Karnataka including the industrial area falling within the planning area of the appellant authority and Section 18 of the KTCP Act automatically comes into play empowering the appellant to charge the betterment fees. It was submitted that the areas of operation of KTCP Act and KIAD Act are entirely different with different aims and objectives and therefore, the principle of interpretation of “special Act prevails over general Act” (*Generalia Specialibus Non Derogant*) would have no application and the same has been wrongly applied by the High Court and the Division Bench erred in reversing the judgment of the Single Judge.

9. Per contra, Mr. Bharat Sangal, learned counsel for the first respondent submitted that once the area is allotted to KIAD Board, the acquisition and the allotment being for industrial purpose which involves the change of land use and its development is controlled by the KIAD Board and the provisions of KIAD Act and it falls outside the purview of KTCP Act. The learned counsel for the first respondent further submitted that KIAD being a Special law, it will override the provisions of Sections 14, 15 and 18 of KTCP Act and a general law like KTCP Act cannot defeat the provisions of the special Law to the extent to which they are in conflict. The learned counsel further submitted that the moment the land was acquired for industrial purpose, it assumes the character of industrial area and no further conversion and development is required and hence, there is no question of conversion fee/betterment fee be paid to KTCP and the entire field is covered by KIAD Act and KIADB Regulations which exclude the application and operation of KTCP Act, 1966.

A 10. The learned counsel appearing for the fifth respondent-KIADB submitted that once an area or land is acquired and declared as an industrial area under Section 3(1) of KIAD Act, the said area gets demarcated for industrial use and the KIADB is duty bound to develop the area for industrial activities and the ancillary area by virtue of the powers and functions under Section 14(C) of KIAD Act. There is no further requirement to apply for change of land use under the KTCP Act. It was further submitted that when any industrial area is set up by KIADB, all infrastructure facilities are also installed and the cost and the expenditure incurred by the KIADB is passed on to the entrepreneurs or allottees who intend to set up facilities for industrial activity in the State of Karnataka and there is no question of payment of conversion charges/betterment fee under Section 18 of the KTCP Act.

D 11. We have carefully considered the rival contentions and perused the impugned judgment and materials placed on record. Upon consideration of the materials placed on record, the following points arise for determination in this appeal:-

- E (i) Whether the High Court was right in holding that Sections 14, 15 and 18 of the KTCP Act are not applicable when the lands are declared as industrial areas under Section 3 of KIAD Act and the payment of betterment fees for the purported development works under the provisions of the KTCP Act does not arise?
- F (ii) When the areas of operation of KIAD Act and KTCP Act are wholly different with different aims and objectives, whether the High Court was right in saying that the principle of interpretation of Special Act prevails over the General Law is applicable?

G 12. Karnataka Town and Country Planning Act, 1961 (KTCP Act) has been enacted for regulation of planning, coordination and supervision of the orderly development of the areas within the State of Karnataka. KTCP Act is for the regulation of the planned growth of land use and development and for the making and execution of town planning schemes in the State.

H 13. A combined reading of Section 14 with Section 18 of the KTCP Act leads to the conclusion that the Planning Authority under KTCP Act

is entrusted with the function of granting licence to put up construction on the land including the land allotted by the KIAD Board to the allottees under the KIAD Act. This is clear from the non-obstante clause in KTCP Act i.e. Section 76-M which declares that the provisions of Section 76-M of KTCP Act along with rules and regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent contained in any other law. A
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14. For proper appreciation of the contentions urged, we may usefully refer to the relevant provisions of both KTCP Act and KIAD Act. The Preamble of the KTCP Act reads as under:-

“An Act to provide for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State of Karnataka. C

Whereas it is necessary and expedient,—

(i) to create conditions favourable for planning and replanning of the urban and rural areas in the State of Karnataka, with a view to providing full civic and social amenities for the people in the State, D

(ii) to stop uncontrolled development of land due to land speculation and profiteering in land, E

(iii) to preserve and improve existing recreational facilities and other amenities contributing towards balanced use of land; and

(iv) to direct the future growth of populated areas in the State, with a view to ensuring desirable standards of environmental health and hygiene, and creating facilities for the orderly growth of industry and commerce, thereby promoting general standards of living in the State; F

And whereas, in order to ensure that town planning schemes are made in a proper manner and their execution is made effective, it is necessary to provide that a local authority shall prepare a development plan for the entire area within its jurisdiction;” G

15. “Development” and “Local Authority” are defined in Section 2 of the KTCP Act as under:-

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A **“Section 2. Definitions** – In this Act, unless the context otherwise requires. –

.....

B (1-c) **“Development”** with its grammatical variations, means the carrying out of building, engineering, mining, or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land;

.....

C [(3-a) **“Local authority”** means a municipal corporation, municipal council, Town Panchayat or Grama Panchayat and a Local Authority is a ‘local authority concerned if any land within its local limits falls in the area of a plan prepared or to be prepared under this Act;

D Admittedly, appellant herein is the planning authority within the meaning of Section 2(7) of the Act.

E 16. Section 14 of the KTCP Act deals with enforcement of Outline Development Plan (ODP) and Regulations and it prescribes that on or from the date on which a declaration of intention to prepare ODP is published under Section 10(1), every land use, every change in the land use and every development in the area covered by the plan shall conform to the KTCP Act, the ODP and the Regulations as approved by State Government under Section 13(3). Section 14(1) stipulates that every land use, every change in land use and every development in the areas covered by the plan shall conform to the provisions of the Act, the Outline Development Plan and the regulations, as finally approved by the State Government under sub-section (3) of Section 13. Section 14(2)(a) of the Act defines the expression ‘development’ which means the carrying out of building or other operation in or over or under any land or the making of any material change in the use of any building or other land.

G 17. Section 15 authorizes the Planning Authority to grant permission for development of building or land. Section 18 confers the power to collect betterment fee and it says where the permission for the change in the use or development of any land or building is granted under Section 15 or Section 16, and such change or development is capable of yielding

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betterment income to the owner, the Planning Authority may levy a prescribed fees not exceeding one third of the increase in the value of the land or building in the prescribed manner for permitting such use or development. In exercise of its powers under Section 10, the Planning Authority declared its intention of making ODP by a notification dated 29.03.1996 which was made public. The authority resolved to adopt the relevant government orders with regard to charge of betterment fees dated 05.08.1996.

18. Section 18 of the KTCP Act confers the power upon the Planning Authority to collect betterment fee where permission for a change in the use or development of the land or building is granted under Section 15 or Section 16 and such change or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change in use or development. Section 18 of the KTCP Act reads as under:-

Section 18.Recovery of a fee in certain cases of permission for change in the use of land or building.-

[(1) Where permission for change of land use or development of land or building is granted under section 14-A or section 14-B or Section 15 or Section 17 and such change or development is capable of yielding a better income to the owner, the Planning Authority may levy a prescribed fee not exceeding one-third of the estimated increase in the value of the land or building in the prescribed manner for permitting such change of land use or development of land or building.]

.....

[(3) The State Government may exempt any Board, Authority or body constituted by or under any law owned or controlled by the State Government or Central Government or an infrastructure Project promoted or implemented by any Company or person and approved by the State Government or Central Government from the payment of fee specified under sub-section (1).

19. The *non-obstante clause* in Section 76-M of the KTCP Act reads as under:-

A **“Section 76-M. Effect of other Laws.—**(1) Save as provided in this Act, the provisions of this Act and the rules, regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any such other law,-

B (a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

C (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.”

D 20. The purpose of Karnataka Industrial Areas Development Act, as seen from the Preamble of the Act, is to make special provisions for securing the establishment or industrial areas in the State and generally to promote the establishment and orderly development of the industries therein and for that purpose to establish Industrial Areas Development Board. The Preamble of the KIAD Act reads as under:-

E *“An Act to make special provision for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid.*

F *Whereas it is expedient to make special provision for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and the orderly development of industries in such industrial areas, and for that purpose to establish an Industrial Areas Development Board and for purposes connected with the matters aforesaid.”*

G 21. As per Section 27 of the KIAD Act, the provisions of the Act shall apply to such areas from such date as have been notified by the

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State Government under sub-section (3) of Section 1. Section 47 is A
the *non-obstante clause* of KIAD Act which reads as under:-

“Section 47 – Effect of provisions inconsistent with other laws – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.”

22. By careful reading of the provisions of both the Acts, it is seen B
that the object of KIAD Act is to make special provisions for securing the establishments of industrial areas in the State and to generally promote the establishment and orderly development of the industries. On the other hand, KTCP Act is for regulation of planned growth of land use and development and for the making and execution of town planning C
schemes in the State. Both the Acts i.e. KIAD Act and KTCP Act operate in different fields. Considering the objects of both the enactments, we find that there is no merit in the plea of the fifth respondent that once a land is acquired for the purpose of industries under the KIAD Act and made over to the Board, the use of the land becomes ‘use for industrial purpose’ and no further permission for change of use of land by KTCP D
or any other authority is required.

23. Though heading of Section 18 of the KTCP Act is **“Recovery of a fee in certain cases of permission for change in the use of land or building”**, the levy of prescribed fee is not only for permission for change of land use but also for development of land or building as E
contemplated under Section 14A or Section 14B or Section 15 or Section 17 of the Act. As pointed out earlier, “development” is defined in Section 2(1-c) of KTCP Act which *inter alia* provides for “*in the use of any building or land and includes sub-division of any land*”. From a combined reading of Section 18 with Section 2(1-c) of KTCP Act, it is F
clear that the levy of prescribed fee under Section 18 of the Act is not merely for change of land use but also for development of land or building. The language of expression used in Section 18 that “*permission for change of land used.....*” and “*development of land or building....*” is to be interpreted in the light of the object of KTCP Act as enunciated G
in the Preamble of the Act.

24. **Power to Exempt:-** Prior to Amendment Act 11 of 1997 (with effect from 19.02.1997), Section 16 of KIAD Act provided for exclusion of operation of other laws in respect of industrial areas. Section 16(C) provided that the State Government may by notification provide H

A that the provisions of any other law relating to local authority which is in force in that area shall cease to apply and thereupon such provision was ceased to apply thereto. In exercise of such powers, the State Government issued the Circular dated 31.12.1990 directing Urban Development Authorities, City Improvement Trust Boards, Planning Authorities not to collect the betterment charges from the statutory bodies
B like Karnataka Housing Board and KIADB. Section 16 of the KIAD Act was omitted by Act 11 of 1997 (with effect from 19.02.1997). Subsequently by the government order dated 17.07.1997, the above Circular dated 31.12.1990 was revoked and the authorities above named have been directed to collect the betterment charges as per law.

C 25. The learned senior counsel for the appellant has drawn our attention to the Minutes of the Meeting held on 04.12.1999 where the question of levy of fees by KTCP in the Bangalore Metropolitan Region came up for discussion. The said meeting was attended by various authorities including the Finance Department, Commissioner of KIADB,
D Director of Town Planning etc. After detailed discussion, the following decisions were taken:-

“After detailed discussions, the following decisions were taken:

1. The Principal Secretaries to Government UDD & RDPR, in consultation with the Principal Secretary to Government
E Commerce & Industries Department and Secretary, Law Department would examine all aspects pertaining to constitution of Industrial Townships in identified industrial areas and come up with firm proposals by end of December, 1999.
2. KIADB will obtain approval from the concerned Planning
F Authority before developing any new industrial area;
3. The matter regarding rationalization of various charges, fees and other levies under the KTCP Act and RDPR Act will be re-examined by the concerned departments, having
G regard to what is prevailing in neighboring States and firm proposals will be formulated within a period of one month;
4. The matter regarding delegation of powers to KIADB for granting approvals for building plans for industrial units to be established in approved industrial areas will be examined
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by the Urban Development Department and if necessary suitable amendments would be effected to the concerned Town Planning Act; and A

5. Principal Secretary to Government Commerce & Industries Department will organize a meeting of major industries who had not yet paid certain charges and fee and try to sort out the matter in consultation with the Urban Development Department; B

Concluding the discussions, the Minister for Large & Medium Industries and Infrastructure Development informed that the main objective of constituting industrial townships was to simplify and streamline the procedures and ensure that approvals and also ensure that these industrial areas are maintained properly which at present are in a sorry state of affairs. He suggested that a proper revenue sharing mechanism between township authority and concerned local bodies should be worked out to ensure that the local bodies are also strengthened and take development works outside the industrial area. In view of the inordinate delay in fulfilling the commitments which had been made in the 1993 policy he requested that all concerned departments should take immediate action to formulate a proposal which is acceptable to all the departments.” [Underlining added] C
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When the government of Karnataka, Finance Department and other departments and also the Commissioner for Industrial Development and other departments have participated in the abovesaid meeting and were all parties to the above decisions, it is not open to KIADB to resile from the minutes and put forth claim contrarily. Having been a party to the discussion in the meeting held on 04.12.1999, the State of Karnataka is also not justified in contending that the lands in question are included in the industrial area declared by the State Government and hence, not bound to pay the development fee under Section 18 of the Act. F

26. It was stated by the learned senior counsel for the appellant that the State of Karnataka has not filed its counter in the High Court. It is also to be pointed out that after dismissal of the writ petition by the Single Judge, a writ appeal was preferred only by the first respondent. The State of Karnataka has neither filed any appeal nor made its stand G

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A clear before the High Court. In the Supreme Court also, the State of Karnataka has not filed its counter affidavit. Only at the time of arguments, the State of Karnataka has filed written submissions stating that the provisions of the KTCP Act are not attracted to the industrial area covered under KIAD Act and that Section 18 of the Act will have no application and hence, no fee could be levied thereunder. In its written
B submissions, the stand taken by the State of Karnataka reads as under:-

C “.....It is stated that in the present case, the lands in question are included in the industrial area declared by the State Government and the change in the land use and development thereof are governed by the provisions contained under Karnataka Industrial Areas Development Act, 1966 Sections 14 and 15 of the Karnataka Town and Country Planning Act, 1961 are not at all attracted and consequently Section 18 thereof will have no application to such lands and hence no fee could be levied there under by respondent No.4 and the petitioner.....”

D Since the State of Karnataka has not made its stand clear before the High Court nor any counter affidavit sworn in by any responsible officer of the State of Karnataka has been filed, we are not inclined to go into the merits of the stand taken by State of Karnataka in its written submissions. More so, when the State is a party to the meeting held on
E 04.12.1999 and concern expressed in the meeting as to the non-payment of development charges and the decisions taken thereon. The State appears to have been sitting over the fence and watching its two key authorities under KTCP Act and KIAD Act litigating.

F 27. Section 14 read with Section 18 of the KTCP Act clearly connotes that the Planning Authority is entrusted with the function of granting licence to put up construction on the land including the land acquired and allotted by the Board under KIAD Act. This is also clear from the provisions contained in the non-obstante clause in Section 74-M of the KTCP Act which declares that the provisions of the said Act and the Rules, Regulations and Bye-Laws made thereunder shall have
G effect notwithstanding anything inconsistent contained in any other law. There is nothing in the provisions of this Act to exclude or exempt the lands which are covered by the KIAD Act.

H 28. In its lengthy judgment, the High Court *inter alia* observed that the very acquisition for the industrial areas and the development by

KIADB by itself involve the change of land use and the development by the KIADB and while so, seeking permission for change of land use and its development under the KTCP Act will be superfluous. The relevant findings of the High Court in the impugned judgment are as under:- A

- So far as the land acquired under KIAD Act and utilised for industrial purpose and development thereof will have to be made by the Board in the area declared under the Act as an industrial area. The industrial activities in the industrial area are developed and controlled by the KIADB in accordance with the provisions of KIAD Act and it is a part of functions of KIADB; B
- The non-obstante clause-Section 47 of KIAD Act excludes the application of the provisions of any other Act; C
- The industrial activities in the industrial area, however, shall not contravene other laws and it shall be in conformity with Zoning Regulations and the Planning Authority constituted under the KTCP Act. The submission of plan to the appellant-Authority is only to ensure that the establishment of the industrial unit by the allottee in the industrial area is in conformity with the Zonal Regulations. Only for this limited purpose, the allottee of the industrial plot must submit its plan to the Planning Authority constituted under the KTCP Act for the purpose of obtaining NOC; D E
- For granting approval and for issuance of NOC, the Planning Authority under KTCP Act cannot levy betterment fee under Section 18 of the KTCP Act because the allottee of an industrial plot does not seek for a change in the land use or development of the said land. There was already a change of land use and its development as an industrial unit which is the function of the Board constituted under the Special Act i.e. KIAD Act; and F
- When the entrepreneurs do not seek for change in land use and its development within the meaning of Sections 14 and 15 of the KTCP Act, the question for levying any fee for change of land use under Section 18 of the Act will not arise. G

29. The High Court, on the one hand, took the view that Sections 14, 15 and 18 of KTCP Act are not applicable to the industrial area which is governed by KIAD Act. On the other hand, the High Court H

- A held that for compliance of the provisions of Sections 14 and 15 of the KTCP Act for all the establishment of the industrial unit, the allottee has to seek approval of the Planning Authority constituted under KTCP Act and KTCP is to scrutinise the plan and other documents so as to ensure that the establishment of the industrial unit by the allottee in the industrial area is in conformity with the Zonal Regulations etc; but KTCP is not to levy betterment fee. The findings of the High Court are self-contradictory to each other.
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30. As discussed earlier, the Planning Authority constituted under KTCP Act is entrusted with the functions of granting approval for any development on the land within its jurisdiction including the land acquired and allotted by the Board under KIAD Act. Per contra, the enactment of KIAD Act is to make special provision for securing the establishment of the industrial area in the State and for that purpose to establish Industrial Areas Development Board. The provisions of both the Acts make the intention of the legislature very clear. As rightly submitted by the learned senior counsel for the appellant that if there are two possible interpretations of an enactment, one should avoid the construction which would reduce the legislation to futility and should rather accept the broader interpretation. A statute is designed to be workable and the interpretation thereof by the court should be to secure that object. In so far as the “industrial area” allotted by KIADB, the interpretation given by the High Court to the provisions of KTCP Act would render the existence of the Planning Authority like the appellant to futility. While on the one hand, the High Court has directed the first respondent to obtain permission from the Planning Authority under KTCP Act and that the appellant-Authority to scrutinise those plans only to ensure that they are in conformity with the Regulations etc. At the same time, the High Court is saying that the appellant-Authority cannot collect the betterment fees. In our considered view, such findings are contradictory to each other and cannot be sustained.
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31. The High Court held that KIAD Act being a Special Act, the same will prevail over KTCP Act which is a General Act. KTCP Act is applicable to all the developmental activities in respect of any land coming within the area of Outline Development Plan (ODP) and the lands in question even though situated in industrial area comes within the area of ODP of the Planning Authority. The developmental activities over the
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said land have to be carried on only with the permission of the Authority and both the enactments have to be harmoniously construed so as to give effect to each of the Acts enacted by the State Government. A

32. The question to be considered in this regard is whether KIAD Act is a special enactment and KTCP Act a general Act and whether the maxim '*Generalia Specialibus Non Derogant*' is applicable as held by the High Court. Rule of interpretation says that a statute is best interpreted when we know why it was enacted, which can be seen from the preamble of an Act. As discussed earlier, as per the preamble of the KIAD Act, it is an Act to make special provision for securing the establishment of industrial areas in the State of Karnataka and generally to promote the establishment and orderly development of industries therein. KTCP Act on the other hand, as we have pointed out earlier, was enacted to provide for the regulation of planned growth of land use and development and for the making and execution of town planning schemes in the State of Karnataka. Thus, considering the legislative intent of the two enactments, it is seen that there is nothing in the KIAD Act to destroy the authority of the Appellant which has its own assigned role to perform under the provisions of the KTCP Act. Considering the object and purpose for which both the Acts were enacted, there is no inconsistency or overlapping between the two enactments and the power of authorities constituted under the Acts. As the areas of operation of KIAD Act and KTCP Act are wholly different, there is no question of applicability of the maxim *Generalia Specialibus Non Derogant*. B
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33. Seeking grant of permission for construction of industrial buildings – Bulk Cement Terminal near Dodaballapur Railway Station, the first respondent submitted its application to the appellant-Authority on 08.06.1998. On that application for sanctioning the development plan consisting of the plan of storage, packing and administrative office buildings in the plot in question, the appellant-Authority *vide* order dated 17.09.1988 levied betterment charges, road charges etc. of Rs.1,48,29,173/- under various heads. In response to the same, the first respondent has sent its reply on 16.10.1998 *inter alia* stating that:- (i) since the first respondent has made payment to KIADB towards allotment of lands considering the first respondent as commercial establishment and levy of development at the rate of Rs.75/- per sq. mtr. may not be necessary; (ii) the construction put up by the first respondent are industrial F
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A buildings and not commercial establishments; and (iii) the first respondent is situated in Bengaluru Rural (North) District and it is not situated in Bengaluru Urban District attracting levy of such higher fee.

34. By careful perusal of the first respondent's response dated 16.10.1998, it is seen that the first respondent has not challenged the jurisdiction of appellant-Authority to levy betterment charges and that the objections that the first respondent has raised were regarding the rate of betterment fee treating the first respondent as commercial establishment and the fact that they are situated in Bengaluru Rural (North) District and not in Bengaluru Urban District. When the first respondent has not raised the objection regarding the jurisdiction/competence of the appellant-Authority to levy betterment fee, the first respondent was not justified in turning around and challenging the powers of the appellant-Planning Authority to levy betterment charges. The High Court, in our view, did not properly consider the response of the first respondent and the High Court erred in saying that the role of KTCP is only to scrutinise the application to ensure that the plan is in conformity with the provisions of the KTCP Act and that it cannot levy the fee.

35. It is also pertinent to note that for obtaining sanction of their plan, the other allottees of industrial plots by KIADB have paid the betterment charges and also the road cess as demanded by the appellant-Authority. In this regard, the learned senior counsel for the appellant has drawn our attention to the communication from ITC Limited including the Pay Order dated 01.08.1997 for payment of betterment charges of Rs.3,01,71,600/-. When other allottees of industrial plots by KIADB have paid betterment charges and road cess for obtaining sanction of the plan, the first respondent cannot challenge the levy and contend that they are not liable to pay the betterment charges.

36. The High Court, in our view, ignored the important provisions of KTCP i.e. Sections 14 and 15 regarding the development act and the development activities including the industrial areas fall within the scope of the appellant-Authority and that the first respondent while obtaining the approval from the appellant-Authority for its plan is bound to pay the betterment charges, road cess and other charges as per the laws. The learned Single Judge has rightly dismissed the writ petition filed by the first respondent and the Division Bench erred in reversing the same and the impugned judgment is liable to be set aside.

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BANGALORE INTER. AIRPORT AREA PLANNING AUTHO. v. 657
BIRLA SUPER BULK TERMINAL [R. BANUMATHI, J.]

37. In the result, the impugned judgment of the High Court is set aside and this appeal is allowed. The first respondent is directed to pay Rs.1,48,29,173/- to appellant-Authority with interest at the rate of 6% from the date of the demand (17.09.1998) within a period of two months from this date, failing which the respondent is liable to pay the interest at the rate of 12% thereafter on the accrued amount.

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Nidhi Jain

Appeal allowed.