HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V.BHATT

W.A.Nos.702/2010, 741/2010, 742/2010, 743/2010, 747/2010, 754/2010, 757/2010, 758/2010, 1030/2010, 1047/2010, 1063/2010, 77/2011, 327/2011, 443/2011, 1337/2012, 533/2015, 296/2012, W.P.Nos.8666/2008, 15278/2008, 16497/2008, 17092/2008, 18512/2008, 18727/2008, 18796/2008, 24687/2008, 26723/2008, WP 27918/2008, 28342/2008, 972/2009, 1260/2009, 3893/2009, 6427/2009, 6442/2009, 6564/2009, 7659/2009, 8339/2009, 9368/2009, 9404/2009, 9908/2009, 18151/2009, 18464/2009, 934/2010, 25461/2010, 25469/2010, 30999/2010, 32531/2010, 2913/2011, 3308/2011, 6643/2011, 6730/2011, 6958/2011, 7472/2011, 7476/2011, 8103/2011, 9429/2011, 9915/2011, 20341/2011, 21385/2011, 22907/2011, 22933/2011, 24651/2011, 24798/2011, 25042/2011, 25785/2011, 27765/2011, 27950/2011, 28638/2011, 30235/2011, 32427/2011, 34704/2011, 273/2012, 274/2012, 597/2012, 1085/2012, 2151/2012, 5075/2012, 5076/2012, 5202/2012, 5631/2012, 11345/2012, 17457/2012, 18669/2012, 21070/2012, 34169/2012, 35841/2012, 35867/2012, 36855/2012, 36905/2012, 36939/2012, 36952/2012, 37579/2012, 37580/2012, 39804/2012, 1377/2013, 2053/2013, 3293/2013, 3521/2013, 4095/2013, 6065/2013, 6274/2013, 6637/2013, 6850/2013, 8871/2013, 8946/2013, 9336/2013, 9828/2013, 9957/2013, 10297/2013, 10637/2013, 10704/2013, 10705/2013, 10894/2013, 11855/2013, 13337/2013, 13868/2013, 13889/2013, 14487/2013, 15464/2013, 15982/2013, 17284/2013, 17416/2013, 17626/2013, 17789/2013, 18188/2013, 20448/2013, 20695/2013, 21439/2013, 21881/2013, 22564/2013, 22877/2013, 22909/2013, 23423/2013, 23440/2013 28093/2013, 31533/2013, 105/2014, 148/2014, 985/2014, 1060/2014, 1225/2014, 1229/2014, 1398/2014, 2074/2014, 3030/2014, 4231/2014, 5321/2014, 5655/2014, 6117/2014, 7540/2014, 7903/2014, 8849/2014, 9370/2014, 9380/2014, 9453/2014, 9454/2014, 9777/2014, 9826/2014, 10669/2014, 11157/2014, 11268/2014, 12328/2014, 12388/2014, 12664/2014, 12870/2014, 13356/2014, 13791/2014, 15067/2014, 15268/2014, 15460/2014, *15473*/2014, 15479/2014, 15690/2014, 15744/2014, 16673/2014, 17002/2014, 17212/2014, 17515/2014, 17588/2014, 18259/2014, 18858/2014, 19061/2014, 19163/2014, 19171/2014, 19281/2014, 19422/2014, 21680/2014, 21830/2014, 22494/2014, 22559/2014, 23299/2014, 24192/2014, 24327/2014, 24920/2014, 25113/2014, 25674/2014, 25906/2014, 26422/2014, 28221/2014, 28223/2014, 28312/2014, 28764/2014, 28851/2014, 29222/2014, 29260/2014, 31048/2014, 32429/2014, 33515/2014, 34657/2014, 34698/2014, 34735/2014, 34738/2014, 34868/2014, 35191/2014, 35525/2014, 35555/2014, 40970/2014, 41159/2014, 420/2015, 873/2015, 876/2015, 1976/2015, 1982/2015, 2113/2015, 2237/2015, 3035/2015, 3419/2015, 3766/2015, 3857/2015, 4553/2015, 5164/2015, 5234/2015, 5974/2015, 6036/2015, 6620/2015, 6690/2015, 6959/2015, 7239/2015, 7392/2015, 7403/2015, 7866/2015, 8523/2015, 8595/2015, 8746/2015, 8766/2015, 8875/2015, 8898/2015, 9089/2015, 9456/2015, 9492/2015, 9639/2015, 9722/2015, 10710/2015, 11190/2015, 11193/2015, 11219/2015, 11452/2015, 12451/2015, 12764/2015, 12851/2015, 12941/2015, 13383/2015, 13788/2015, 13859/2015, 14690/2015, 15610/2015, 15616/2015, 16091/2015, 18279/2015, 18624/2015 and 18671/2015.

COMMON ORDER: (*Per Hon'ble Sri Justice S.V.Bhatt)*

Through this common order, we propose to dispose of writ appeals/writ petitions involving common questions of law.

The batch of writ appeals, is directed against the common order dated 28.04.2010 in W.P.No.26688 of 2007 and the batch. By the order dated 28.04.2010, the learned Single Judge disposed of the batch of the writ petitions by holding as follows:

> " a) It shall be competent for the Urban Development Authorities, or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts; and

b) the land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted."

The 2006 Act referred to is the Andhra Pradesh Agricultural (Conversion for Non-Agricultural Purposes) Act, 2006, which shall be hereinafter called and referred to for short "Act 3 of 2006".

The prayers in the batch of writ petitions seek declaration that the petition lands which are part of a zonal development plan under the Andhra Pradesh Urban Areas (Development) Act, 1975
(for short "Act 1 of 1975") are outside the purview of Act 3 of 2006 or that the letter issued by the Urban Development Authority calling upon the petitioners to obtain 'No Objection Certificate'/ Clearance under Act 3 of 2006 for considering layout application, as illegal, without jurisdiction and unconstitutional.

In the instant batch, the following questions arise for consideration under the Act 3 of 2006 and the Act 1 of 1975.

i. What is the scope and ambit of Act 3 of 2006 and Act 1 of 1975, in particular, the scope, purpose and effect of payment of Conversion Tax and Development Charges under these Acts?

ii. Whether the Urban Development Authority for consideration and sanction of layout plans submitted by a developer of a property covered by Development Plan, can insist upon submission of No Objection Certificate/Clearance from the Revenue Divisional Officer under Act 3 of 2006 for processing an application filed for layout approval?

iii. Whether it is necessary to get land converted into Non-Agricultural use once it is covered by Development Plan and after the sanction of layout by the Urban Development Authority?

Heard Mr. M. V. Durga Prasad, Mr. P. Prabhakar Rao,
Mr.Ajay Reddy, learned counsel, Mr. V. Venkataramana and
Mr. B. Adinarayana Rao, learned senior counsel for appellants/ petitioners and the learned Advocates General for the States of Telangana and Andhra Pradesh.

For convenience, we refer to the averments in Writ Appeal No.702 of 2010 arising out of W.P.No.26688 of 2007 and the reference to these allegations is sufficient for understanding the circumstances under which the questions of law arises for decision. The learned counsel appearing for all the parties advanced arguments on the questions framed above.

The case of appellants in Writ Appeal No. 702 of 2010 is that the appellants are the absolute owners and possessors of the land in Survey No.242/Part, 244/Part and 245/Part of Bahadurpalli Village, Khuthbullahpur Mandal, Ranga Reddy District. The appellants claim right and title to the said property through registered sale deeds dated

11.03.2005, 28.05.2005, 03.06.2005, 04.06.2005 and 27.12.2005. The appellants under Section 12 of Act 1 of 1975, applied to the Hyderabad Urban Development Authority/1st respondent for conversion of land use under the zonal development plan.

The competent authority through Memo bearing No. 26892/I MA dated 04.05.2006 issued draft notification calling for objections against proposed change of use. The request of appellants for change of land use was accepted through G.O.Ms.No.287, Municipal Administration and Urban Development (1) Department dated 30.05.2006. The appellants applied under Sections 13 and 14 of Act 1 of 1975 for sanction of layout for the petition land.

The 1st respondent called upon the appellants to pay development charges of Rs.44,10,582/-. The levy of development charges is under Sections 27 and 29 of Act 1 of 1975. On 15.11.2007, the appellants paid a sum of Rs.44,10,582/- towards development charges as demanded by the Urban Development Authority. The 1st respondent/Urban Development Authority through Letter No.11766/MP2/Planning/ H/2006 dated 11.11.2007 called upon the appellants to produce 'No Objection Certificate' (NOC) from the District Collector evidencing conversion of subject land into non-agricultural purpose to process the pending application for approval of layout. The appellants challenge the instant letter on various factual and legal grounds.

Briefly stated, the case of 1st respondent, as reflected in the counter affidavit, is that as an authority under Act 1 of 1975, the 1st respondent is concerned with the development of an area covered by master plan/zonal development plan as per the purpose specified therein. The 1st respondent admits receipt of Rs.44,10,582/- towards development charges. As far as the averments in letter dated 11.11.2007, the 1st respondent replies that the condition to obtain NOC from the authority under Act 3 of 2006 is insisted upon as per the directives issued by the Government of Andhra Pradesh. The 1st respondent alleges that Act 1 of 1975 cannot be understood as overriding Act 3 of 2006. It is stated that an owner intending to develop the land into any of the purposes stated under the notified master plan is required to follow the prescriptions of Act 3 of 2006 and Act 1 of 1975. In other words, it is the case of 1st respondent that the amount paid under Act 1 of 1975 is towards development charges and under Act 3 of 2006 one time tax is payable and the tax is imposed by R.D.O for conversion of agricultural land for non-agricultural purposes. Therefore, according to 1st respondent Acts 1 of 1975 and 3 of 2006 operate in different spheres and the notifications or conversion of land for development purpose cannot be equated as conversion of agricultural land for non-agricultural purpose under Act 3 of 2006. The 1st respondent prays for dismissal of writ petition.

The 2nd respondent in their counter affidavit states that the provisions of Act 3 of

2006 are applicable and binding on a person intending to convert agricultural land for non-agricultural purpose in spite of any order/notification under Act 1 of 1975. It is the case of

2nd respondent that the payment of development fee under Act

1 of 1975 is to an authority constituted under Act 1 of 1975 and this levy is in the nature of fee collected towards development charges by the specified authority. The development charges are payable in terms of applicable regulations made under Act 1 of 1975 and the payment does not exonerate the appellants from the legal obligation of conversion tax under Act 3 of 2006.

The 2nd respondent further states that under the Andhra Pradesh Non-agricultural Land Assessment Act, 1963 (for short 'Act 14 of 1963'), the Government was authorized to levy

non-agricultural land tax upon conversion of agricultural land into non-agricultural land. Under Act 14 of 1963, the authorities were authorized to collect non-agricultural land tax from a person who puts agricultural land for non-agricultural use or purpose. The power or authority under Act 14 of 1963 to impose Non-Agricultural Land Assessment (NALA) Tax on land actually used for non-agricultural purpose and the land to be used for non-agricultural purpose was challenged in a batch of writ petitions and the principle was finally decided by the Supreme Court in **Federation of A.P. Chambers of Commerce and Industry and others vs. State of A.P.**[1] For the purpose of examining and interpreting Act 3 of 2006, in our view the law declared by the Supreme Court in **Federation of A.P. Chambers**' case is useful and relevant portion of judgment reads thus:

> "7. It is trite law that a taxing statute has to be strictly construed and nothing can be read into it. In the classic passage from Cape Brandy Syndicate, which was noticed in the judgment under appeal, it was said:
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> "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."
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> This view has been reiterated by this Court time and again. Thus, in The State of Bombay v. Automobile and Agricultural Industries Corporation, Bombay 1961 12 S.T.C. 122, this Court said:
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> But the courts in interpreting a taxing statute will not be justified in adding words thereto so as to make out some presumed object of the Legislature... If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.
>
> 8. On behalf of the respondent-State, learned Counsel drew our attention to the judgment of this Court in The Controller of Estate Duty, Gujarat v. Shri Kantilal Trikamlal , That judgment also is to the same effect and does not avail the respondents. It said:
>
> The sweep of the Sections which will be presently set out must, therefore

> be informed by the language actually used by the legislature. Of course, if the words cannot apply to any recondite species of property, courts cannot supply new logos or invent unnatural sense to words to fulfil the unexpressed and unstated wishes of the legislature.
>
> 9. We are in no doubt whatever, therefore, that it is only land which is actually in use for an industrial purpose as defined in the said Act that can be assessed to non-agricultural assessment at the rate specified for land used for industrial purposes. The wider meaning given to the word 'used' in the judgment under challenge is untenable. Having regard to the fact that the said Act is a taxing statute, no court is justified in imputing to the legislature an intention that it has not clearly expressed in the language it has employed."

The State Legislature taking note of the law declared by the Apex Court in **Federation of A.P. Chambers**' case and with a view to putting in place comprehensive legislation, repealed Act 14 of 1963 and enacted Act 3 of 2006. Therefore, in this background, it is the case of 2nd respondent that the payment under Act 3 of 2006 is one time payment of tax for conversion of agricultural land for non-agricultural purpose, instead of levy and demand of NALA Tax for every Fasili under Act 14 of 1963. The amount levied and collected under Act 3 of 2006 is by its very nature a tax levied by the State for conversion of agricultural land for non-agricultural purpose and no parallel can be drawn with the development charges paid to development authority under Act 1 of 1975 for institution of use or conversion of use. According to respondent, Act 1 of 1975 and Act 3 of 2006 administer different situations and applications. It is further stated that the State Government after taking note of lack of coordination between the different authorities who grant permissions under Act 1 of 1975 issued note Nos.84(15/V&E-D-3/2007), (371/V&E-D3/2007) and (735/V&E-D3/2007) dated 28.05.2007 to insist upon production of NOC/Clearance from R.D.O under Act 3 of 2006. While considering sanction of layout approvals, the instant note calls upon the Vice-Chairmen of Urban Development Authorities to insist upon production of NOC from authority (RDO) under Act 3 of 2006.

The respondents pray for dismissal of the writ petitions.

The learned counsel for appellants/petitioners contend that Act 1 of 1975 and Act 3 of 2006 cover the same subject matter and these Acts are overlapping. Therefore, in application of these enactments, the well established principles of interpretation as laid down in **ALLAHABAD BANK V. CANARA BANK**[2], **SURESH NANDA V. CBI**[3], **ASHOK MARKETING LIMITED V. PUNJAB NATIONAL BANK**[4] and **KSL & INDUSTRIES LIMITED V. ARIHANT THREADS LIMITED**[5] are to be applied and compliance with the requirements under Act 1 of 1975, satisfies the requirement of due conversion of agricultural land for any of the non-agricultural purposes. The insistence upon clearance/NOC from R.D.O is *ultra vires* and in support of this

proposition, the appellants place reliance on **SUBASH KUMAR LOHADE VS THE SPECIAL OFFICER, MUNICIPAL CORPORATION OF HYDERABAD**[6]**.** It is contended that the import of both the Acts is one and the same. The words 'conversion' and 'change of land use' used in these enactments are used in the same sense.

The learned counsel further contend that the *non obstante* clause in the special enactment viz., Act 1 of 1975 has overriding effect on the provisions of Act 3 of 2006 and that the operation of Act 1 of 1975 excludes firstly the operation of provisions of Act 3 of 2006 in a notified urban area and secondly the conversion tax under Act 3 of 2006 amounts to double taxation. The learned counsel further contend that even assuming without admitting that land conversion tax is payable, the scheme of Act 3 of 2006 provides for *ex post facto* payment of conversion tax for use of land for non–agricultural purposes. Therefore, the Urban Development Authorities cannot call upon applicants to obtain NOC from the Revenue Department. The condition precedent imposed by the Urban Development Authority for consideration of layout approval application is arbitrary and without jurisdiction. The learned counsel appearing for the appellants place strong reliance upon Section 2(e), (f) (o) and (p), Sections 3, 6, 7, 13, 27, 28 and 29 of Act 1 of 1975 to contend that the area covered by Act 1 of 1975
is comprehensively governed by Act 1 of 1975 and none else.
The appellants rely upon the regulations issued by the Development Authority from time to time under Act 1 of 1975 to illustrate their contention that the fee paid under Act 1 of 1975 is in fact a conversion fee. By virtue of issuance of a notification under Section 7 of Act 3 of 2006, the lands used for such notified purposes are exempted from Act 3 of 2006 and there is no need to pay land conversion tax to Government. The appellants in support of their contention under Section 7 of Act 3 of 2006 rely upon the notification issued by the 1st respondent for institution of use or any development use under Act 1 of 1975. In other words, the submission of learned counsel for the appellants is that once a notification under Act 1 of 1975 is issued permitting change of land use, application of Act 3 of 2006 is excluded to such notified land.
It is finally contended that the NOC cannot be insisted upon from Revenue Department and the requirement is without authority and amounts to arbitrary exercise of power by the 1st respondent.

On the other hand, learned Advocates General appearing for Urban Development Authorities in respective States contend that the challenge to impugned letter is unfounded and that a reading of provisions of Act 1 of 1975 and/or Act 3 of 2006 by appellants is completely erroneous and liable to be rejected
in limini. According to the learned Advocates General, imposition of conversion of land tax on land used for non-agricultural purpose should not be confused with either development charges paid to an authority or change of land use permitted through a

notification under Act 1 of 1975 which is for a different purpose and has nothing to do with the payment of land conversion tax under Act 3 of 2006. According to them, the appellants are completely ignoring the legislative history of Act 14 of 1963 which was repealed through Act 3 of 2006 and the scope and ambit of re-enactment viz., Act 3 of 2006. The object and purposes of Act 1 of 1975 and/or Act 3 of 2006 are distinct, operate in different spheres and there is no overlapping of subject matter as contended by the appellants. Strong reliance on the statement of objects and reasons, scope and levy under Act 14 of 1963 and Act 3 of 2006 has been placed to contend that under Act 14 of 1963 NALA Tax was levied for a
Fasli (year) upon usage of any land for non-agricultural purpose. The Government was levying and demanding NALA tax for use of the total extent of agricultural land for non-agricultural purpose and however levy of NALA Tax under Act 14 of 1963 on account of ratio of **Federation of A.P. Chambers'** case was restricted to the exact extent of land used by an occupier for non-agricultural purpose. The Government, with a view to addressing the basis of adjudication in **Federation of A.P. Chambers'** case and also in the place of annual levy of NALA Tax, enacted Act 3 of 2006 providing for imposition of conversion tax for use of agricultural land for
non-agricultural purpose.

According to the respondents, the levy and demand of conversion tax under Act 3 of 2006 is different and distinct from development charges paid under Section 14 read with Sections 27 to 29 of Act 1 of 1975. According to the learned counsel, the contention raised on Section 7 of Act 3 of 2006 is misconceived and liable to be rejected *in limini*, for Section 7 deals with statutory exemption granted to a few classes of lands specified in the Section and grant further exemption to a class of lands from the application of Act 3 of 2006. Therefore, according to the counsel, the notification, even if issued, under Act 1 of 1975 has no application to claim exemption from either payment of conversion Tax or applicability of provisions of Act 3 of 2006. Further, if the basis of appellants' case namely that the Acts are covering the same subject and overlapping, is rejected and no exception for levy and demand of conversion tax vis-à-vis development charges can be taken. The learned Advocate General for the State of Telangana has relied upon decisions in **Firm Ram Krishna Ramnath Agarwal v. Secretary, Municipal Committee, Kamptee** [7], **M/s.Jain Bros. v. the Union of India**[8], **Kewal Krishan Puri v. State of Punjab**[9], **Govind Saran Ganga Saran v. Commissioner of Sales Tax**[10] and **Municipal Council, Kota, Rajasthan v. Delhi Cloth & General Mills Co. Ltd., Delhi**[11]. The learned Advocates General pray for dismissal of the appeals/petitions.

In order to appreciate the contentions raised by the parties,

it would be necessary to refer to history, scope/object and salient features of Acts 14 of 1963, 3 of 2006 and 1 of 1975. The salient features are examined with the assistance of basic aids of interpretation of statutes and to determine whether these enactments operate in the same sphere or not.

The repeal of Act 14 of 1963 and enactment of Act 3 of 2006:

As already noted, the levy of tax on agricultural land for non-agricultural use was introduced through Act 14 of 1963.

The Tahsildar under Section 3 of Act 14 of 1963 was authorized to levy non-agricultural land tax for use of agricultural land for non-agricultural purpose. As per Section 3 of Act 14 of 1963, NALA tax was levied for different purposes at the rates specified in the schedule appended to the Act. The assessment of tax is for Fasli (year) and NALA Tax was levied for the use of agricultural land for residential, commercial and industrial purpose, as the case may be. Section 4 of Act 14 of 1963 empowered the Tahsildar to determine and demand NALA tax for non-agricultural use of agricultural land.

In **Federation of A.P. Chambers'** case, the Apex Court has laid down the principle of law that NALA tax can be levied only on the land actually used for any of the purposes specified in schedule of Act 14 of 1963, but not on entire land owned by an occupier.

The sequel of **Federation of A.P.Chambers'** case illustratively stated that the assessee who possesses an extent of Ac.10-00 for running an industry is required to pay NALA Tax only for the extent of land actually used for non-agricultural purpose viz., Buildings, Factory ancillary facilities and not on vacant land held as adjunct or otherwise to the main purpose of establishment by the occupier. The principle of law laid down in **Federation of A.P.Chambers'** case was narrowed down the application of Act 14 of 1963 in recovering NALA Tax. Therefore, Act 14 of 1963 was repealed through Act 3 of 2006. The Statement of Objects and Reasons of Act 3 of 2006 reads thus"

> The Andhra Pradesh Non-Agricultural Land Assessment Act, 1963 provides for the levy of assessment of lands used for Non-agricultural purposes.
>
> The "Non-agricultural land" as defined under Section 2(g) of the Act, means Land other than the land used exclusively for the purpose of agriculture but does not include the land used exclusively for (i) Cattle sheds (II) hay ricks.
>
> Section 3 of the Act, is the charging section according to the areas and rates indicated in the Schedule therein. The Schedule sets out the rates of assessment per Sqr. Mtr. of land used per Fasli year (a) for industrial purpose;(b) for commercial purpose; and (c) for any other Non-agricultural purpose including residential purpose.
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> The High Court of A.P. in S.V.Cements Ltd., vs. R.D.O., Nandyal and others (1993 (2) ALT 32) interpreted the word "used" recurring in Section 3 and the Schedule of the said Act means not only actually used but also means any land meant to be used or set apart from being used.
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> On appeal, the Apex Court in the Federation of A.P. Chamber of Commerce and Industry and others vs. State of A.P., (C.A.No.1039/2000)

on 04.08.2000 held that it is only the land which is actually in use for an industrial purpose as defined in the Act that can be assessed to non-agricultural assessment at the rate specified for land used for Industrial purposes. If the Supreme Court orders are implemented by charging NALA, the demand will go down to 75% of the total demand.

The Government have evolved New Industrial policy and orders were issued exempting all Industrial units from levy of NALA with effect from 01-04-2000 to 31-3-2005.

Accordingly, Government have decided to abolish NALA by repealing The Andhra Pradesh Non-Agricultural Land Assessment Act, 1963 in its present form and to introduce levy in lumpsum at the rate of 10% (Ten percent) of the basic value of the land in arrears as may be fixed by the Government from time to time as one time measure at the time of conversion by undertaking a specific legislation.

This Bill seeks to give effect to the above decision."

The statement of objects and reasons clearly shows that the enactment of Act 3 of 2006 is to regulate the conversion of agricultural land to non-agricultural purposes for matters connected therewith or incidental thereto. The preamble of Act 3 of 2006 provides for repealing Act 14 of 1963. The Hon'ble Supreme Court in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat and others**[12] laid down the interpretative utility of statement of objects and reasons in construing a statute. The relevant portion reads thus:

> "Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute has sought to remedy. The facts stated in the preamble and the Statement of Objects and Reasons appended to any legislation are evidence of the legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law."

A statute is the highest constitutional formulation of law.

The means by which the Supreme Legislature, after fullest deliberations, expresses its final will. A clear distinction exists between a repeal simipliciter and a repeal and re-enactment by the legislature. Likewise, the legal position as to where there is a repeal of an enactment and simultaneous re-enactment and whether the re-enacted law manifests an intention incompatible with or contrary to the provisions of the repealed provisions of the

re-enacted enactment is examined. Therefore, this Court while interpreting the scope and ambit etc., of Act 3 of 2006 must bear in mind the law subsisting when Act 3 of 2006 has come into operation. It is desirable and imperative to go through the then existing legislation, if any, and obtain its clear understanding vis-à-vis Act 3 of 2006 and the necessity for fresh declaration of law by the State Legislature. Thus viewed, Act 14 of 1963 has been in force from 1963 till 2006. Under Section 3 of 14 of 1963, NALA tax was paid for non-agricultural use of agricultural land. The Apex Court in **Federation of A.P Chambers**'s case has restricted the levy and demand of NALA tax only to the actual use of agricultural land for non-agricultural purpose by an assessee under the Act

and not on the total agricultural land held by an occupier for non-agricultural purpose. Therefore, the State Legislature with a view to removing the difficulty caused by the decision in **Federation of A.P.Chambers,** repealed Act 14 of 1963 and enacted Act 3 of 2006. It is not the case of appellants that between 1964 and 2006 NALA tax was not levied by the Tahasildar for the urban properties notified under Act 1 of 1975. The levy of non-agricultural land assessment tax, however, was imposed from 1964 till 2002-2003 and development charges were recovered as and when application under Section 14 of Act 1 of 1975 was made for grant of permission to the Urban Development Authority.

The preamble and the short title of the Act clearly suggest that Act 3 of 2006 is repealing Act 14 of 1963 and the Act 3 of 2006 is intended to regulate the conversion of agricultural land to non-agricultural purposes. Act 3 of 2006 regulates conversion of agricultural land for non-agricultural purposes and levy of tax for such conversion of land is provided for under Act 3 of 2006. Section 2(a) of Act 3 of 2006 defines agriculture as raising any crop or garden produce; or orchards or pastures or hayricks and Section 2(b) defines agricultural land as land used for agriculture. Under Section 2(c), the word conversion means change of land use from agricultural to non-agricultural purposes. Non-agricultural land means - land other than the agricultural land. Section 3 imposes restriction on conversion of agricultural land to non-agricultural purpose without prior permission of the competent authority.

The procedure for obtaining permission is covered by Section 4, and the Act authorizes grant of regulation of conversion of land and one time levy and collection of non-agricultural land tax. From the scheme of the Act, it is evident that penalty is provided for default in payment of NALA tax and collection of land conversion tax with fine at 50% of NALA tax. Every owner or occupier of agriculture land is under obligation to pay conversion tax at the rate of 9% for use of agricultural land for non-agricultural purposes. The scheme of Act 3 of 2006 firstly is a one time imposition of tax, while regulating the conversion of agricultural land to non-agricultural purposes.

The tax is payable to the Government and the object and intendment of Act 3 of 2006 thus is regulation of land conversion and imposition of tax for such land conversion.

The learned counsel appearing for the appellants contend that with the issuance of a notification under Section 12 of Act 1 of 1975, exemption under Section 7 of Act 3 of 2006 is available to the notified lands under Act 1 of 1975, and no land conversion tax need be paid under Act 3 of 2006. In other words,

it is contended that with the issuance of a notification by the Government for change of development use, there is automatic conversion of agricultural land for non-agricultural use and thereby the applicability of Act 3 of 2006 is exempted. In support of this submission, some of the appellants rely upon land use notification issued under Section 7 of Act 1 of 1975 or particular change of land use permitted through individual

notifications issued under Section 12 of Act 1 of 1975. According to the learned counsel for appellants, the preparation and finalization of master plan and zonal development plan under Act 1 of 1975 or issuance of a notification under Section 12 of Act 1 of 1975, by legal fiction deemed change of land use is occasioned and again the levy of tax for conversion of land use is unavailable. The submission does not stand to the scrutiny of literal interpretation of Section 7 of Act 3 of 2006.

Section 7 of Act 3 of 2006 read as follows:

> **Act not to apply to certain lands:-**
> Nothing in this Act shall apply to-
> (a) Lands owned by the State Government ;
> (b) Lands owned by a local authority and used for any communal purposes so long as the land is not used for commercial purposes ;
> (c) Lands used for religious or charitable purposes ;
> (d) Lands used by owner for household industries involving traditional occupation, not exceeding one acre ;
> (e) Lands used for such other purposes as may be notified by the Government from time to time;
> (f) Lands used for Aquaculture, Dairy and Poultry.][4]

Section 2 (d) (xi) defines notification thus:

> xi) 'Notification' means a notification published in the Andhra Pradesh Gazette; and the word 'Notified' shall be construed accordingly

The literal construction of Section 7 of Act 3 of 2006 exempts lands owned by the State Government; the local authority; lands used for communal purposes and so long as the lands are not used for commercial purposes; land used for religious or charitable purposes; land used by owner of household industry involving traditional occupation not exceeding one acre. A few inbuilt or statutory exemptions are provided in the Section dealing with exemption. Through clause (e) of Section 7, power is conferred on the Government to exclude application of Act 3 of 2006 for lands used for such other purposes, as may be notified by the Government from time to time. Section 7 (e) of Act 3 of 2006 confers power on the Government to consider issuance of a notification under Section 7 of Act 3 of 2006, including a category of agricultural land from operation of Act 3 of 2006. Stated in simple expression, the Government may under Section 7 of Act 3 of 2006 issue a notification exempting a category or class of lands from the application of Act 3 of 2006. In other words, the master plan or zonal development plan/individual change of user notifications issued under Act 1 of 1975, will not exempt the applicability of Act 3 of 2006. Therefore, the notification even, if any, issued under Act 1 of 1975, cannot be either contended or by necessary implication understood as excluding application of Act 3 of 2006. For the above reasons, the contention urged under by relying on Section 7 (e) of Act 3 of 2006 is without merit and is accordingly rejected.

The scope and ambit of the Andhra Pradesh Urban Areas (Development) Act 1975 (Act 1 of 1975):

The learned counsel for appellants by placing reliance upon the scheme of Act 1 of 1975 contends that firstly the comprehensive development in a notified area under Act 1 of 1975 is taken care by Act 1 of 1975 and with the issuance of notification under this Act, the change of user is effected and no further conversion of agriculture land can be envisaged or payment of land conversion tax would arise. On the contrary, the learned Advocates General appearing for respondents contend that these two enactments have distinct purposes and that levy of land conversion tax under Act 3 of 2006 is by way of tax at the time of conversion of agriculture land for non-agriculture purposes and levy of development fee under Act 1 of 1975 is for development use of notified land, particularly at the time of development of property in the notified area. The development fee is paid to the Urban Development Authority, which is vested with the responsibility of overall development of urban area. We propose to examine the salient features of Act 1 of 1975 and answer these issues.

The preamble of Act 1 of 1975 states that Act 1 of 1975 is enacted to provide for the **development of urban areas** in the State of Andhra Pradesh according to plan and for matters ancillary thereto. From the preamble, it is evident that Act 1 of 1975 is intended to provide for development of notified urban areas according to the master plan and for matters ancillary thereto.

We proceed to interpret the relevant provisions of Act 1 of 1975 by reading the language of statute as it is. The words employed in the statute are given natural and ordinary meaning and that by harmoniously construing all the important sections of the Act, the scheme of the Act is determined.

> **Section 2 (e): 'development' with its grammatical variations means the carrying out of all or any of the works contemplated in a master plan or zonal development plan referred to in this Act, and 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 and includes redevelopment:**
>
> **Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land that is to say-**
>
> **(i) The carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;**
>
> **(ii) The carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;**
>
> **(iii) The carrying out by a local authority or statutory undertaking of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;**
>
> **(iv) The use of any building or other land within the cartilage purpose incidental to the enjoyment of the dwelling house as such; and**
>
> **(v) The use of any land for the purpose of agriculture, gardening or forestry(including afforestation) and the use for any purpose specified in this clause of any building occupied together with land so used"**

Section 2 (e) defines development as carrying out all or any works contemplated in (I) master plan, (II) zonal development plan referred in Act 1 of 1975 and development means carrying out building, engineering, mining or other operations in, on, over or under land. Development means making any material change in any building or land and re-development. Through proviso, the following acts are not treated as development for the purposes of the Act.

a) Temporary works which do not materially affect the appearance of the building
b) Carrying out the works within the road alignment.
c) Repairs to sewers and drains etc.
d) Any ancillary work carried out for use of any building or cartilage.
e) Use of land for agriculture, gardening or forestry purposes.

The definition of the word 'development' on the one hand is comprehensive and on the other, a few activities though satisfy the meaning of development, still are excluded from the meaning of development. Such exclusion is provided to avoid undue hardship in carrying out a few activities in a notified area.

Section 2(f):'development area' means any urban area or group of urban areas declared to be a development area under sub-section (1) of Section 13.

Section 2 (f) defines development area as urban area or group of urban areas declared under Section 13(1) of Act 1 of 1975. Development area, therefore, consists of any urban area or group of urban areas declared to be a development area under sub-section (1) of Section 13.

Section 2(o):'urban area' means:-

(i) the area comprised within the jurisdiction of the Municipal Corporation of Hyderabad or of any Municipality constituted under the Andhra Pradesh Municipalities Act, 1965 and also any such area in the vicinity as the Government may, having regard to the extent of, and the scope for, the urbanization of that area or other relevant considerations, specify in this behalf, by notification; and

(ii) such other area as the Government may, by notification, declare to be an urban area, which in the opinion of the Government, is likely to be urbanized.

Section 2 (o) covers Municipal Corporation of Hyderabad or any area covered by any municipality constituted under the Andhra Pradesh Municipalities Act, 1965 together with such area in the vicinity of the Municipal Corporation or municipality, as the case may be, which has the potential for urbanization. The Government by issuing notification declare any area as urban area which has the potential of urbanization.

Section 2 (p): 'zone' means any one of the divisions into which the development area may be divided for the purposes of development under this Act'

Section 2 (p) means zones as one of the divisions of development area divided

for the purpose of development under this Act. The divisions of zones are - residential, commercial, industrial etc.

Section 6: Civic survey of and Master Plan for development area:- (1) The Authority shall, as soon as may be, carry out a civic survey of and prepare a Master Plan for the development area concerned.

(2) The Master Plan shall-

(a) define the various zones into which the development area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (either after carrying out development thereon or otherwise) and the stages by which any such development shall be carried out; and

(b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones may be prepared.

(3) The Master Plan may provide for any other matter which is necessary for the proper development of the development area.

Section 7: Zonal development plans:- (1) Simultaneously with the preparation of Master Plan or as soon as may be thereafter the Authority shall proceed with the preparation of zonal development plan for each of the zones into which the development area may be divided.

(2) A zonal development plan may,-

(a) contain a site plan and land use plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zones for such purposes as roads, housing, schools, recreation, hospitals, industry, business, markets, public works and utilities, public buildings, public and private open spaces and other categories of public and private uses;

(b) specify the standards of population density and building density;

© show every area in the zone which may, in the opinion of the Authority, be required or declared for development or redevelopment; and

(d) in particular, contain provisions regarding all or any of the following matters, namely-

(i) the division of any site into plots for the erection of buildings;

(ii) the allotment or reservation of lands for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

Section 6 obligates conduct of civil survey and preparation of master plan for development area i.e. urban area or group of urban areas declared under Section 13(1) of Act 1 of 1975. The zonal development area takes care of various development plans envisaged in master plan.

Section 13: Declaration of development areas and development of land in those and other areas:- (1) As soon as may be after the commencement of this Act, where Government consider it necessary to do so for purposes of proper development of any urban area or group of urban areas in this State they may, by notification, declare such urban area or group of urban areas to be a development area for the purposes of this Act.

(2) The Government may, by notification and in accordance with such rules as may be made in this behalf-

(a) exclude from a development area any area comprised therein; or

(b) include in development area any other area.

(3) Save as otherwise provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a development area.

(4) After the commencement of this Act, no development of land within the

development area shall be undertaken or carried out by any person or body including any department of the Government, unless permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act.

(5) After the coming into operation of any of the plans in any area within the development area, no development shall be undertaken or carried out in that area unless such development is also in accordance with such plans.

(6) Notwithstanding anything in any other law or the provisions contained in sub-sections (4) and (5), development of any land undertaken in accordance with any law by any person or body including any department of the Government or any local authority before the commencement of this Act, may be completed without compliance with the requirements of those sub-sections.

Provided that such development of land shall be completed within one year from the date of commencement of this Act; unless the Authority for good and sufficient reasons, extends the said period of one year for such further period as it deems fit.

(7) After the commencement of this Act, no development of land shall be undertaken or carried out by any person or body including any department of the Government in such area adjoining to or in the vicinity of the development area, as may be notified by the Government unless approval of or sanction for such development has been obtained in writing from the local authority concerned, in accordance with the provisions of relevant law relating thereto, including the law relating to town planning for the time being in force and the rules and regulations made thereunder

Provided that the local authority concerned may, in consultation with the Authority, frame or suitably amend its regulations in their application to such area adjoining to or in the vicinity of the development area.

8)(a) Where any part of the area adjoining to or in the vicinity of the development area, as notified under sub-section (7), is in the process of rapid development or is likely to develop in the near future, the local authority concerned shall, either on the direction of the Government or on the advice of the Authority, prepare in consultation with the Authority, town planning scheme under the law relating to Town Planning, for the time being in force, and publish the schemes as required under that law and submit them to the Government for sanction.

(b) Any development in the area covered by such town planning schemes shall be in accordance with the provisions of the schemes as sanctioned by the Government.

© Where in regard to the matters specified in sub-section(7) and of this sub-section there is a difference of opinion between the local authority concerned and the Authority, the matter shall be referred to the Government, whose decision thereon shall be final.

(9) In this section, and in Sections 14, 16 and 41 the expression 'Department of the Government' means any department, organization or public undertaking of the State Government or of the Central Government.

With the commencement of Act 1 of 1975, the Government considers necessary for proper development of any urban area or group of urban areas in the State, declares such urban area or group of urban areas to be a **development area** for the purpose of this Act and declaration of urban area to be a development

area for the purpose of this Act. The Section mandates that development shall be strictly in accordance with the development notified under the Act. A person constructing a building or developing land in a development area applies to the authority for permission

to construct a building or develop land in accordance with the development plan.

> **Section 14: Application for permission:- (1) Every person or body including a Department of the Government desiring to obtain the permission referred to in Section 13 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be determined by regulations.**
>
> **(2) Every application under sub-section (1) shall be accompanied by such fee as may be prescribed and a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate if the extent of the land exceeds the ceiling limit or an affidavit declaring that the total extent of land by such holder, or his or her spouse and unmarried children does not exceed the ceiling limit.**
>
> **Provided that no such fee shall be necessary in the case of an application made by a Department of the Government, or any local authority.**
>
> **(3) On receipt of an application for permission under sub-section (1) the Authority, after making such enquiry as it consider necessary, in relation to any matter specified in clause (d) of sub-section (2) of Section 7, or in relation to any other matter, shall by order in writing either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission.**
>
> **(4) Where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant in the manner determined by regulations.**
>
> **(5) If, within ninety days after the receipt of any application made under this section for permission, or of any information or further information required under rules or regulations, the Authority has neither granted nor refused its permission, such permission shall be deemed to have been granted, and the applicant may proceed to carry out the development but not so as to contravene any of the provisions of this Act or any rules or regulations made under this Act.**
>
> **(6) The Authority shall keep a register of applications for permission under this section in such form as may be determined by regulations.**
>
> **(7) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with, as may be determined by regulations and shall be available for inspection by any member of the public during specified hours on payment of such fee, not exceeding five, as may be determined by regulations.**
>
> **(8) Where permission is refused under this section the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission.**

Under Section 14, every person desiring to obtain the permission referred to in Section 13 shall make an application to the authority and the application contains such particulars in respect of the **development** to which the application relates, as may be determined by the regulations. Section 14 (2) provides for payment of fee as may be prescribed and Section 14(3) provides for enquiry of application received under sub-section (1) of Section 14 and the enquiry for the purpose of sub-section (3) is in respect of matters specified in clause (d) of sub-section (2) of Section 7. Therefore, the person intending to obtain permission has to state details of development and the development prescribed by regulations and obtain permission for executing development as per development plan.

> **Section 15: Use of the land and buildings in contravention of plans:- After the coming into operation of any of the plans in a zone, no person shall use or**

permit to be used any land or building in that zone otherwise than in conformity with such plan:

Provided that it shall be lawful to continue to use upon such terms and conditions as may be determined by regulations made in this behalf, any land or building for the purpose for which, and to the extent to which, it is being used on the date on which such plan comes into force."

Likewise, Section 15 prohibits use of land and buildings in a notified development area in contravention of the zonal development plan and also prohibits the authorities from granting permission for development except in accordance with the zonal development plan.

Section 27: Levy of the development charges:- (1) Subject to the provisions of this Act and the rules made thereunder, the Authority shall levy charges (hereinafter called the development charges) on the institution or (sic. of) use or change of use of land or building or development of any land or building for which permission is required under this Act in the whole area or any part of the development area within the maximum rate specified in Section 28.

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

Provided further that the previous sanction of the Government has been obtained for the rates of levy.

(2) Where the Authority has determined to levy development charges for the first time or at a new rate, it shall forthwith publish a notification specifying the rates of levy of development charges.

(3)The development charges shall be leviable on any person who institutes or charges any such uses, undertakes or carries out any such development.

(4) Notwithstanding anything contained in sub-sections (1) and (2), no development charges shall be levied on institution of use or of change of use or development of, any land or building vested in or under the control or possession of the Central or the State Government or of any local authority.

Under Section 27, the authority is empowered to levy development charges on the institution of use as per the zonal development plan; for charges for change of use of land or building, development of any land or building for which permission is required under Act 1 of 1975. The development charges payable under this Section are for institution of use; change of use of land or building or development of any building or area for which a permission is required. From the nature of levy under Section 27, it is discernible that the levy is a charge payable for undertaking development as per the notified zonal development plan to Urban Development Authority.

Section 28: Rates of Development:-

(1)(a) For the purpose of assessing the development charges, the use of land and building shall be classified under the following categories:

(i)Industrial;

(ii) Commercial;

(iii) Residential;

(iv) Agricultural; and

(v) Miscellaneous.

(b) In classifying the use of land and building under any of the categories mentioned in clause (a), the predominant purpose for which such land and building are used shall be the main basis for such classification.

(2) The rates of development charges shall be determined on the proposed use of land or building:-

(a) in the case of development of land, at a rate to be prescribed per hectare for that area.
(b) in the case of development of building, at a rate to be prescribed per square metre of floor area for that area;
(Provided that such rates of development charges shall not exceed rupees three hundred per square meter in the case of development of land and rupees one hundred and twenty five per square meter in the case of development of 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 the building and the land."

The development charges are payable according to the broad classification stated in Section 28 of the Act.

Section 29 provides for assessment and recovery of development charges by the authority from the applicant developing a property.

Before concluding the scope and the ambit of various aspects namely long title, preamble, definitions, enacting clause or formula, operative and principal provisions and administrative provisions of Act 1 of 1975, we deem it appropriate to refer to the Urban Development Authority Rules, 1977. Illustratively stated, the rates of development charges under Section 28 are as follows:

For institution of use or change of use	For Land	For Built up area			
	In erstwhile Municipal Corporation of Hyderabad area merged in Greater Hyderabad Municipal Corporation	In erstwhile 12 Municipalities merged in Greater Hyderabad Municipal Corporation	Other Municipalities & Gram Panchayats	Greater Hyderabad Municipal Corporation area	Outside Greater Hyderabad Municipal Corporation area
I .Institution of use					
a. Vacant to Residential		75	75	40	100 50
b. Vacant to Commercial	100	100	50	125	60
c. Vacant to Industrial	60	60	30	125	30
d. Vacant to Miscellaneous	60	60	30	125	30
II. Change of land use					
a. Recreational to Residential	200	100	50	100	45
b. Recreational to Commercial	225	150	60	100	60
c. Recreational to Industrial	200	100	60	100	60
d. Recreational to Miscellaneous	200	100	50	60	60
e. Agricultural/Conservation or Green Belt to Residential	150	100	50	75	45

Xxxx `
Xxxx

xxxx
xxxx

From the above, it is clear that a person interested in development of a land/plot/building is required to pay the above development charges to the authority under Act 1 of 1975. The levy of development charges is for institution of use i.e., the notified use in the zonal development plan, conversion fee for change of development

use from residential to commercial or as the case may be. Likewise, conversion of land use from recreation to residential, residential to commercial etc., is provided subject to payment of development charges as applicable to a category. Therefore, the main object of Act 1 of 1975 is for development of urban areas according to master plan/zonal development plan and provide for matters ancillary thereto. The short title of Act 1 of 1975 further reinforces the scope and object of Act 1 of 1975 as an enactment intended for planned development of notified urban areas. Act 1 of 1975 defines development and provides for planned development of urban areas. To remove difficulties in implementation of Act 1 of 1975, a few development activities are removed from development area/urban area together with the obligation to apply for permission under Sections 13, 14 and 15 of Act 1 of 1975 and this would go to show that the Act is primarily concerned with development of "urban area" in accordance with master plan/zonal development plan. In the process, the development charges are paid for institution of use or change of land use, and the payment of development fees are attributable towards development charges payable to an authority under the Act by a developer of building/land etc., as the case may be, but not a conversion fee as contended the appellants.

Re-stated with emphasis, in our considered view, Act 1 of 1975 defines development, declares urban areas for development and provides for civic survey and preparation of zonal development plan by the authority. A person, who undertakes either construction of a building or development of land, is required to pay development fee under Sections 14 and 27 of Act 1 of 1975 to the Urban Development Authority for undertaking development as provided in the zonal development plan. In a given case, if on the application of a developer, change of land user is granted through a notification under Section 13 or Section 15, such change of land use enables the applicant to take up development contrary to notified master pan/zonal development plan already notified under Section 7 of the Act. Thereafter, the prohibition contained under Section 15 of the Act is not attracted to such development. Therefore, notification under Act 1 of 1975 from any view point cannot be treated as a conversion of land from agriculture purpose to non-agriculture purpose.

From the scheme of Act 3 of 2006, we are of the view that conversion tax is payable for use of agricultural land for non-agricultural purpose to the Government, whereas development fee is payable under Act 1 of 1975 by a developer of building/land for institution of use or change of land use to Urban Development Authority. These two levies namely the land conversion tax under Act 3 of 2006 and the development fee for development according to master plan/zonal development plan are separate and distinct.

In **Municipal Council, Kota, Rajasthan**'s case, while considering the impact of

name of a levy, the Apex Court held thus:

> "Whenever a challenge is made to the levy of tax, its validity may have to be mainly determined with reference to the legislative competence or power to levy the same and in adjudging this issue the nature and character of the tax has to be inevitably determined at the threshold. It is equally axiomatic that once the legislature concerned has been held to possess the power to levy the tax, the motive with which the tax is imposed become immaterial and irrelevant and the fact that a wrong reason for exercising the power has been given also would not in any manner derogate from the validity of the tax. In M/s Jullundur Rubber Goods Manufacturers' Associa- tion v. The Union of India and Another, AIR (1970) SC 1589 this Court while dealing with a challenge to the levy of rubber cess under Section 12 (2) of the Rubber Act, 1947 as amended in 1960 observed that the tax in the nature of excise duty does not cease to be one such merely because the stage of levy and collection has been as a matter of legislative policy shifted by actually providing for its levy and collection from the users of rubber, so long as the character of the duty as excise duty is not lost and the incidence of tax remained to be on the production or manufacture of goods. Likewise, once the legislature is found to possess the required legislative competence to enact the law imposing the tax, the limits of that competence cannot be judged further by the form or manner in which that power is exercised. In (Morris) Leventhal and Others v. David Jones, Ltd., AIR (1930) PC 129, the question arose as to the power of the legislature to impose 'Bridge Tax', when the power to legislate was really in respect of 'tax on land'. It was held therein as follows:
>
> "The appellants' contention that though directly imposed by the legislature, the bridge tax is not a land tax, was supported by argument founded in particular on two manifest facts. The bridge tax does not extend to land generally throughout New South Wales, but to a limited area comprising the City of Sydney and certain specified shires, and the purpose of the tax is not that of providing the public revenue for the common purposes of the State but of providing funds for a particular scheme of betterment. No authority was vouched for the proposition that an impost laid by statute upon property within a defined area, or upon specified classes of property, or upon specified classes of persons, is not within the true significance of the term a tax. Nor so far as appears has it ever been successfully contended that revenue raised by statutory imposts for specific purposes is not taxation"

Similarly, the contention of appellants that the conversion tax virtually amounts to double taxation on the same subject is misconceived and that the levy of land conversion tax is by the Government and development fee by the Urban Development Authority. In **Radhakisan Rathi v. Additional Collector**[13], the Apex Court while considering the competence of different authorities to impose tax on the same subject matter held thus:

> In the light of the aforesaid relevant provisions of the Panchayats Act we have to consider the question posed for our decision. It is obvious that a cinema theatre situated within the territorial limits of local municipality or a corporation can be taxed by the concerned municipality in exercise of its powers under the relevant Municipal Act. But if the same theatre is also situated within a block duly constituted under the Panchayats Act it would fall within the territorial limits of the concerned Janapada Panchayat constituted for that block as laid down by Section 103 read with Section 104 of the Panchayats Act. Once that happens the concerned Janapada Panchayat would obviously be entitled to invoke its taxation powers under Section 157 for the area within its jurisdiction and if a theatre is situated within that area then obviously Section 157 would get attracted for imposing the twin types of taxes mentioned by

Section 157 which are permissible to be imposed by the Janapada Panchayat. It is now well settled that the same subject matter can be covered by taxation nets imposed by different competent taxing authorities and there will be no double taxation involved in such case. We may refer in this connection to the decision of this Court in the case of Sri Krishna Das v. Town Area Committee, Chiragaon, [1990] 3 SCC 645. Para 30 of the report at page 654 lays down as under.

> "30. Where more than one legislative authority, such as the State legislature and a local or municipal body possess the power to levy a tax, there is nothing in the Constitution to prevent the same person or property being subject to both the State and municipal taxation or the same legislature exercising its power twice for different purposes. In Avinder Singh v. State of Punjab the State of Punjab in April 1977 required the various municipal bodies in the State to impose tax on the sale of Indian made foreign liquor @Re. 1 per bottle w.e.f. May 20, 1977. The municipal authorities having failed to take action pursuant to the directive the State of Punjab directly issued a Notification under Section 90(5) of the Punjab Municipal Corporation Act, 1976 and similar provision of the Municipal Act, 1911. The petitioner challenged the constitutional validity of the said statutes and the levy on the, inter alia, ground of double taxation. Krishna Iyer, J. speaking for the Court held: (SCC p.144, para 4)
>
> > "There is nothing in Article 265 of the Constitution from which one can spin out the Constitutional vice called double taxation (Bad economics may be good law and vice versa). Dealing with a somewhat similar argument, the Bombay High Court gave short shrift to it in Western India Theatres. Some undeserving contentions die hard, rather survive after death. The only epitaph we may inscribe is: Rest in peace and don't be reborn! If one the same subject matter the legislature chooses to levy tax twice over there is no inherent invalidity in the fiscal adventure save where other prohibitions exist."

All the citations relied upon by the learned Advocates General appearing for the States of Andhra Pradesh and Telangana are not considered, for the view we have independently taken on the scope and ambit of these two enactments.

Having considered the provisions of both the enactments independently and after interpreting the Sections in the manner indicated above and by relying upon the principles of law laid down by Apex Court in **KSL & Industries Ltd**'s case, we are of the view that the submissions of learned counsel appearing for the appellants are *de void* of any merits and are accordingly rejected. Hence, it is held that either the scope and the ambit or payment of land conversion tax and the Development fee under Act 3 of 2006 and Act 1 of 1975 are separate and distinct. The question is answered accordingly.

The further contention of learned counsel for the appellants that the Urban Development Authority cannot insist upon production of NOC from Revenue Divisional Officer under Act 3 of 2006 by reference to the penalties provided under Section 6 of Act 3 of 2006, is equally unfounded. May be that under Section 6 of Act 3 of 2006, penalty for recovery of land conversion tax with fine is provided for. That does not mean that the Government with a view to synchronizing the functioning of all the departments and prevent loss of revenue cannot call upon the Urban Development Authority to insist production of NOC from the Revenue Divisional Officer under Act 3 of 2006. The Urban

Development Authority construing strictly gets jurisdiction to entertain an application for which conversion tax is paid under Act 3 of 2006 and the NOC can be justified by this reason as well. The insistence at best can be treated a concomitant and the authorities can certainly insist upon NOC from applicant for processing the application made under Section 14 of Act 1 of 1975. For the view we have taken on questions (i)(ii) and (iii), no exception could be found against the impugned common order dated 28.04.2010.

For the reasons stated above, the appeals are without merit and accordingly dismissed.

As we have confirmed the common order dated 28.04.2010, we are inclined to dispose of writ petitions as follows:

a) It shall be competent for the Urban Development Authorities or the Local Authorities, as the case may be, to insist on submission of clearance/permission under the 2006 Act as a condition precedent for releasing of layouts, and

b) the land has been put to non-agricultural use before the 2006 Act came into force, such clearance/permission shall not be insisted.

c) Conversion of land into Non-agricultural use under the provisions of Act 3 of 2006 is necessary even if the land is covered by Master Plan and sanction of layout by the Development Authority under the provisions of Act 1 of 1975.

Consequently, miscellaneous petitions, if any pending, also stand disposed of. No costs.

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DILIP B.BHOSALE, ACJ

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S.V.BHATT, J

Date: 28.08.2015
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[1] 2000) 6 SCC 550
[2] AIR 2000 SC 1535
[3] AIR 2008 SC 1414
[4] (1990) 4 SCC 406
[5] 2008) 9 SCC 763
[6] AIR 1985 AP 352
[7] AIR 1950 SC page 11
[8] (1969) 3 SCC 311
[9] (1980) 1 SCC 416
[10] 1985(supp) SCC 205
[11] (2001) 3 SCC 654
[12] (2005)8 SCC 534
[13] (1995) 4 SCC 309