

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3rd day of April 1998

PRESENT

THE HON'BLE MR. R.P. SETHI, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT APPEAL Nos.7732-33/1996

BETWEEN:

1. The State of Karnataka by  
its Secretary to Government,  
Revenue Department,  
M.S.Building, Dr.Ambedkar  
veedhi, Bangalore-1.
2. The Special Land Acquisition  
Officer, 3rd Floor,  
Vishveshwaraiah Tower,  
Podium Block, Bangalore-1.
3. The Deputy Commissioner,  
Bangalore District,  
'Krishi Bhavan',  
Hudson Circle,  
Bangalore-1.

..APPELLANTS

(By Sri A.V.Srinivasa Reddy, AGA)

AND:

1. The Rajajinagar Housing Co.op.  
Society Ltd.,  
represented by its secretary,  
No.136-1/1, 17th Main Road,  
47th Cross, III Block,  
Rajajinagar,  
Bangalore-10.

2. The Rajajinagar Housing  
Co.op. Society Ltd.,  
represented by its Secretary,  
No.136-1/1, 17th Main Road,  
47th Cross, III Block,  
Rajajinagar, Bangalore-10.

..RESPONDENTS

(By Sri N.S.Srinivasan for R-1 & R-2)

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These Writ Appeals filed u/s.4 of the  
Karnataka High Court Act, praying to set aside  
the Order dated 5.7.96 in W.P.No.25414 &  
25415/95.


These Writ Appeals as having been heard  
and reserved for pronouncement of judgment  
this day, Gopala Gowda J, delivered the  
following:-

J U D G M E N T

The appellant State Government has filed  
this appeal against the impugned order passed  
by the learned Single Judge contending that  
the claim of the first respondent-Society in  
asking for refund of amount pertaining to the  
conversion fine imposed by the second appellant  
herein is in confirmity with Section 95 of  
Karnataka Land Revenue Act, 1964 readwith  
Section 14(2) of the Karnataka Town and  
Country Planning Act, 1961 (hereinafter called  
as Act in short). It is contended that the

power of the Deputy Commissioner third appellant herein to pass an order of conversion of agricultural land into non agricultural use, the party who seeks the conversion shall pay conversion fine under Rules 107 of the Karnataka Land Revenue Rules, 1966 (hereinafter called as rules in short). Therefore, it is submitted that respondent's claim for refund of the conversion fine, sought for in the writ petition to an extent of Rs.23,78,920/- is not tenable in law.

2. It is further contended that levying of conversion fine for seeking conversion of agricultural lands into non agricultural purpose and use is regulated by section 95(2) & (7) of the Act. Therefore, the respondent Society could not have urged that they are exempted from payment of conversion fine under Rule 107 of the Rules. It is also further contended that the prayer of the respondent for refund of the amount pertains to the year 1989 is hopelessly barred by limitation, therefore the learned single Judge could not have entertained the claim of the respondent.



3. It is further submitted by Sri. Srinivasa Reddy, learned Additional Government Advocate that the law laid down in the judgment of this Court in the case of SPECIAL DEPUTY COMMISSIONER vs. NARAYANAPPA reported in ILR 1988(2) Kar 1398 is not applicable to the facts of this case. The learned Single Judge ought not have relied upon the said judgment, in view of the amendment to Section 95 of the Act by Act No.2/1991 by Section 3 of the amended Act. There is an amendment to Section 95 of the Act conferring power upon the Deputy Commissioner to pass an order of conversion of agricultural land into non agricultural use and further it is contended that by Act No.2/1991 proviso to sub-section (2) of Section 14 was inserted to the Act, conferring power upon the Deputy Commissioner for change of land use under the said Section needs the diversion of the agricultural land into non agricultural purposes, such use or change of use shall not be permitted unless permission is obtained in accordance with the provisions of Karnataka Land Revenue Act, 1964, for such diversion. Therefore, he would submit that the impugned order is not in



accordance with law, hence the same is liable to be set aside.

4. The learned Counsel Sri Sanjaya Gowda, appearing on behalf of the respondent submits that the claim of the Society for refund of the conversion fine paid by the Society is entitled based on the judgment of this Court referred to above. Following the above said judgment, this Court in respect of similarly placed Societies in the writ petition No.17520/90 D.D. 28.8.1990 and W.P.No.19314/90 D.D. 14.12.1990 granted the relief of refund of amount of conversion fine paid by them. The impugned order passed by the learned Single Judge following the above said judgment has directed the appellants to refund the amount claimed by the respondents would not call for interference by this Court in exercise of its appellate jurisdiction and power as the learned Single Judge has passed the impugned order based on the judgments referred to above.

5. After hearing the learned Counsel for the appellants and the contesting respondents,



after careful consideration of the amended Section 95(2) of the Act, the power is conferred upon the Deputy Commissioner in respect of conversion of agricultural lands into non-agricultural purpose or use. The amendment to the said sub-section is by Act No.2 of 1991 and the amended sub-section (2) of Sec.95 shall be deemed to have been inserted to the Act, with effect from 15th day of January 1965. Further, sub-section (2) of Sec.14 of the Karnataka Town and Country Planning Act, 1961 makes it very clear that where the change of land use under the said section needs the diversion of the agricultural land into non-agricultural use is required, which proviso to the said section reads thus:


" 14(1)                      xx                      xx                      xx

(2)                      "No such change in land use or development as is referred to in sub-Section (1) shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate granted by the Planning Authority in the form prescribed,

Provided that where the use or change of land use under this section needs the diversion of agricultural land to non-agricultural purposes, such use or change of use shall not be permitted unless permission is obtained in accordance with the provisions of the Karnataka Land Revenue Act, 1964 for such diversion."

6. The said provisions of both the Acts referred to above, if read along with sub-sec.(7) of Sec.95 of the Karnataka Land Revenue Act, 1964 makes it very clear that the 3rd respondent - Dy. Commissioner herein may, subject to such Rules as may be made by the State Government on its behalf, requires payment of conversion fine in this regard. Rule 107 of the Karnataka Land Revenue Rules clearly specify the amount of levy of fine for conversion of agricultural land for non-agricultural use and the amount of fine which may be levied under sub-section (7) of Sec.95 shall be at the rates specified in the table annexed thereto.

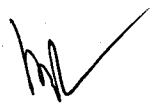
The judgment referred in the impugned order, in the case of COMMISSIONER v. NARAYANAPPA (I.L.R. 1988(2) 1398) therefore, has no application to the facts of this case as the said judgment was delivered by this Court on 16th March 1987, prior to the amendment to Section 95 of the Karnataka Land Revenue Act, 1964 and the proviso to sub-section (2) of Section 14 of the Karnataka Town and Country Planning Act, 1961. The learned single Judge ought not to have placed reliance upon the said judgment



to pass the impugned order. Further, it is not in dispute that agricultural lands which were acquired by the respondent-Society through the second appellant for the benefit of its members for formation of layout in the lands in question and allotted sites in favour of its members. Therefore, in view of proviso to sub-section (2) of section 14 of the Karnataka Town & Country Planning Act, 1961, clearly states the change of land use under the said Section needs diversion of agricultural land into non agricultural purposes, such use or change of use shall not be permitted unless permission is obtained in accordance with the provisions of Karnataka Land Revenue Act, 1964 for such diversion. By reading the above said proviso and reading sub-section (2) and (7) of Section 95 make it very clear that the agricultural lands were acquired by the second appellant in favour of the respondent-Society, was required to be converted from agricultural into non agricultural purpose or use. In view of the fact that sub-section (2) of Section 95 of the Act has been amended and the said sub-section shall be deemed to have been inserted



in the statute with effect from 15th January 1965 and further sub-section (7) of Section 95 clearly states that the land assessed or deemed for the purpose of agricultural is permitted to be converted into non agricultural purpose or use under sub-section (2) of Section 14 of the Karnataka Town & Country Planning Act. The Deputy Commissioner has got the power under sub-section (7) of section 95 of the Act to direct respondent-Society for demand of conversion levy fine in respect of the lands acquired for its benefit, as per the rules prescribed by the first appellant State Government in that regard. From the above said provisions of both the Acts and Rules make it abundantly clear that for the benefit of the respondents, agricultural lands were acquired by the second appellant and the conversion of those lands from agricultural into non agricultural purpose or use was required to be obtained for which the respondents are liable to pay the conversion fine under Rule 107 of the Rules. The submission of the learned Counsel appearing for the respondents that the amendment to sub-section (2) of Section 95 of K.L.R. Act by amending the



said Section stating that the incorporation of the words to sub-section (2) of Section 95 shall be deemed to have been inserted to the Act with effect from 15th January 1965, the appellant Government has not passed the validating Act even though, the amendment to the said sub-section has been inserted with effect from 15th January 1965. His submission is not tenable in law for the reason that there is an amendment to sub-section (2) to Section 95 by Act No.2/91, wherein it has been specifically stated that the said amendment shall be deemed to have been inserted to the Act with effect from 15th January 1965. In this view of the matter, the contention of the respondents in that regard that in the absence of validating Act the appellants have no power to retain the conversion fine amount in exercise of their power under Section 95 sub-sections (2) & (7) of the Act cannot be accepted for the reason that the State Government in exercise of its legislative power has validly amended to the Section 95 of the K.L.R. Act and section 14 of Karnataka Town & Country Planning Act and further the amendment to Section 95 has been specifically stated that it shall be deemed to be in the said section with

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effect from 15th January 1965. In this view of the matter, submission of the learned Counsel for the respondents is not tenable. Hence, the contention in that regard is rejected.

7. For the reasons stated above, the impugned order passed by the learned Single Judge following the Division Bench judgment of this Court referred to above, which judgment has no application to the facts of the case. Hence the impugned order passed by the learned Single Judge is not legal and valid. Hence, we pass the following order:

The appeal is allowed. Impugned order passed by the learned Single Judge is set aside, consequently writ petition filed by the respondents also dismissed. Rule issued is discharged. In the facts and circumstances of the case, no costs.



Sd/-JUDGE

Sd/-JUDGE

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