

**(1999) 05 KAR CK 0013**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 30444, 30445 and 30446 of 1994

D. Krishna Rao and Others

APPELLANT

Vs

The Special Deputy Commissioner, Bangalore

RESPONDENT

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**Date of Decision :** 28-05-1999

**Acts Referred:**

Karnataka Land Reforms Act, 1961 — Section 79 B, 80

Karnataka Land Revenue Act, 1964 — Section 2 (11), 2 (20), 95, 95 (5)

**Citation :** (1999) ILR (Kar) 2992 : (1999) 5 KarLJ 279

**Hon'ble Judges :** Chandrashekaraiah, J

**Bench :** Single Bench

**Advocate :** Sri T.S. Ramachandra, for the Appellant; Sri V. Prakash, High Court Government Advocate, for the Respondent

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## **Judgement**

1. The petitioners in these writ petitions have sought for a direction to the respondent-Special Deputy Commissioner to accept the conversion fine as per the rules and issue necessary conversion certificate in favour of the Karnataka Government Class "D" Employees' House Building Cooperative Society Limited. The facts in these writ petitions are as follows.-

The Karnataka Government Class "D" Employees' House Building Co-operative Society Limited is a society registered under the provisions of Karnataka Co-operative Societies Act, 1957. The petitioners in W.P. No. 30444 of 1994 are the owners of the land measuring 122 acres in Survey Nos. 5, 6, 7, 11, 13, 14, 16, 17, 19 and 20 to 27 of Lingadeer-anahalli, Yeshwanthapura Hobli, Bangalore North Taluk. The petitioners in W.P. No. 30445 of 1994 are the owners of the land measuring 26 acres, 3 guntas in Survey Numbers 12 (western portion) 35, 36, 37 and 38 of the above said village. The petitioner in W.P. No. 30446 of 1994 is a society in whose favour the petitioners in W.P. Nos. 30444 of 1994 and 30445 of 1994 have executed an agreement of sale agreeing to sell the above said lands and under the said agreement the society was put in possession of the above said lands.

2. The society claiming to be in possession of the above said agricultural lands under the agreement of sale made an application to the Special Deputy Commissioner, Bangalore for permission to use the agricultural lands for non-agricultural purpose u/s 95 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "Revenue Act") on 27-5-1993. Since the Deputy Commissioner has not passed any order on the above said application within four months from the date of receipt of the application, the petitioners have filed these writ petitions for a direction to issue conversion certificate after accepting the conversion fine on the ground that the permission sought for is deemed to have been granted u/s 95(5) of the Land Revenue Act. The further case of the petitioners is that the said land does not come within the green belt area and therefore, there is no impediment for the Special Deputy Commissioner to issue permission to use the agricultural land for non-agricultural purpose.

3. The respondent has filed statement of objection stating that the application filed by the society for permission to use the agricultural land for non-agricultural purpose is not in accordance with law and therefore it is no application for permission in the eye of law. It is further stated that the land in question comes within the green belt area as per Comprehensive Development Plan (CDP) published in a Notification No. RDP 124 BAC 90, dated 19-4-1990 and therefore, the lands in question cannot be used for non-agricultural purpose under the provisions of the Karnataka Town and Country Planning Act, 1961 (hereafter referred to as "Planning Act").

4. The first and foremost question to be considered in this writ petition is; whether the society claiming to be in possession of agricultural lands can maintain an application for permission to use agricultural land for non-agricultural purpose u/s 95 of the Revenue Act? Section 95(2) of the Revenue Act reads as follows.-

"If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall notwithstanding anything contained in any law for the time being in force apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit:

Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the Outline Development Plan or the Comprehensive Development Plan published under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan".

Under this provision any occupant who wishes to use agricultural land for non-agricultural purpose, is required to make an application to the Deputy Commissioner for permission.

5. The case of the society is that it is an occupant since it has been in possession

of the property under the agreement of sale executed by the land owners and can maintain an application for permission u/s 95(2) of the Revenue Act.

6. The word "occupant" is defined u/s 2(20) of the Revenue Act which reads as follows.-

"An "occupant" means a holder in actual possession of unlamented land other than the tenant:

Provided that whether the holder in actual possession is a tenant, the landlord or superior landlord, as the case may be, shall be deemed to be an occupant;

Explanation.--A ryotwari pattadar in the Madras Area and Bellary District, a pattadar or shikmidar in the Hyderabad Area and a holder or landlord in the Coorg District shall be an occupant of such land for purposes of this Act".

The word "holder" is defined u/s 2(11) of the Revenue Act which reads as follows.-

" "To hold land" or to be a "land holder" of land means to be in lawful possession of land, whether such possession is actual or not".

As per the above said definitions a person to be an "occupant" must be a holder in actual possession. In order to be a "holder" he must be in lawful possession of the land. Therefore, an "occupant" is a person who is a holder of the land and in lawful possession of the said land.

7. Section 79-B of the Karnataka Land Reforms Act, 1961 reads as follows.-

"79-B. Prohibition of holding agricultural land by certain persons.--(1) With effect on and from the date of commencement of the Amendment Act, except as otherwise provided in this Act.-

(a) no person other than a person cultivating land personally shall be entitled to hold land; and

(b) it shall not be lawful for,

(i) an educational, religious or charitable institution or society or trust, other than an institution or society or trust referred to in sub-section (7) of Section 63, capable of holding property;

(ii) a company;

(iii) an association or other body of individuals not being a joint family, whether incorporated or not; or

(iv) a co-operative society other than a co-operative farm, to hold any land".

The Society which made the applications for permission is a co-operative society and not a co-operative farm. Therefore, under this section, the society cannot hold any agricultural land from 1-3-1974 i.e., the date on which the Amendment

Act came into force. Since the holding of an agricultural land by a society is prohibited by the Karnataka Land Reforms Act, the possession of the land by the society is not a lawful possession and therefore, the society cannot be considered as an "occupant" of the lands so as to make an application for permission u/s 95 of the Revenue Act. Therefore, I am of the considered view that the society being prohibited from holding the agricultural land cannot be considered as an "occupant" and therefore, the application filed by the society for permission u/s 95 of the Revenue Act is not maintainable in law.

8. The learned Counsel for the petitioners placed reliance on the decision in *Ningappa Durgappa v Hanumanthappa Balappa and Another* and submitted that Section 80 of the Karnataka Land Reforms Act, 1961 does not prohibit an agreement of sale between the land-owner and a non-agriculturist and in the said view of the matter the possession of the land by the society cannot be termed as unlawful. This decision has no application to the facts of this case because a person who is not an agriculturist may purchase the agricultural land after obtaining necessary permission under the Act. Whereas, the society being prohibited from holding any agricultural land, no permission u/s 80 of the Act could be given to the society to purchase any agricultural land. Therefore, the decision relied upon by the petitioner has no application to the facts of this case.

9. As I have held that the society is not an occupant and it cannot make an application for permission, there is no deemed permission as contemplated u/s 95(5) of the Revenue Act.

10. The petitioners nextly contended that the lands in question do not come under the green belt area as there is no notification issued u/s 95(3-A) of the Revenue Act. The Government has not produced any notification declaring the green belt area as provided u/s 95(3-A) of the Revenue Act. But, at the same time, the State Government has published a Comprehensive Development Plan under a notification as required under the Planning Act, 1961. Section 24 of the Planning Act provides that the provisions of Sections 14, 14-A, 15 and 16 shall apply mutatis mutandis to the enforcement of the Comprehensive Development Plan (CDP). The State Government in its statement of objections has stated that the lands in question come within the green belt area as per the CDP. If that is so, the land which comes within the green belt area cannot be used for non-agricultural purpose without obtaining the change of land use as provided under Sections 14, 14-A, 15 and 16 of the Planning Act. The proviso to Section 95(2) confers power on the Deputy Commissioner to grant permission for conversion of agricultural land if the use of the land is in accordance with the ODP or the CDP published under the Planning Act. This shows that if the use of land is not in accordance with the ODP or CDP, the Deputy Commissioner may refuse to grant permission. In the case on hand the lands in question come within the green belt area. If that is so, it cannot be used for formation of layout with a view to provide sites to the members of the society. The object of this proviso is to preserve the agricultural land if it is declared as a green belt area. Therefore,

even in the absence of any notification issued u/s 95(3-A) of the Revenue Act still a land if it is included in the green belt area in the CDP or ODP cannot be used for non-agricultural purpose unless there is a change of land use under the Planning Act.

11. For the reasons stated above, these writ petitions are liable to be dismissed. In the result, I pass the following order:-

(i) Writ petitions are dismissed.

(ii) Rule is discharged.