

(1995) 07 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 30598 of 1993

Mallikarjun Co-operative Housing Society Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-07-1995

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 118 (1A), 48 A

Citation : (1995) ILR (Kar) 2230 : (1995) 6 KarLJ 46

Hon'ble Judges : A.J. Sadashiva, J

Bench : Single Bench

Advocate : B.V. Acharya and R.V. Jayaprakash, for the Appellant; M.M. Poonacha, H.C.G.P. for R-1 and R-2, Jayakumar S. Patil, for R-9 to R-12, P. Vishwanath Shetty, Senior Advocate and F.V. Patil, for R-13 and R-14, for the Respondent

Final Decision : Allowed

Judgement

A.J. Sadashiva, J.—The order dated 5.12.1987 passed by the Land Tribunal, Hubli, in Case No. KLR. SR.NG.P.3 is sought to be quashed by the petitioner in this Petition.

2. The petitioner is a Co-operative Housing Society (for short "the Society"). It preferred an appeal against the impugned order before the District Land Reforms Appellate Authority, Dharwad, in LRA No. 284/87 u/s 118(1A) of the Karnataka Land Reforms Act, 1961 (for short "the Act"). After the Act was amended, the Society filed a Civil Petition before this Court to call for records in LRA 284/87 on the file of the District Land Reforms Appellate Authority, Dharwad, and to treat the said appeal as a Writ Petition and quash the impugned order. Accordingly this Writ Petition came to be registered.

3. The deceased 13th respondent filed an application in Form No. 7 u/s 48-A of the Act before the 2nd respondent for grant of occupancy rights claiming to be a tenant in respect of 7 acres of land in Sy.No.61 of Nagashettikoppa Village under one Sirasappa Prathama Setty, from the year 1947-48. The said application was

filed against the sons, daughters and the wife of Sirasappa Prathama Setty. The petitioner appears to have got itself impleaded as a party-respondent. It was stated by the Society that the entire Sy.No.61 was alienated for non-agricultural purposes, as per the orders dated 20.6.1950 passed by the Collector, Dharwad District, Dharwad, and the Society purchased an extent of 7 acres in Sy.No. 61 of Nagashettikoppa Village for a consideration Rs. 73,000/- under a registered Sale Deed dated 12.9.1969. The Land Tribunal by its order dated 23.3.1979 rejected the application of the 13th respondent on the ground that the applicant was neither cultivating the land nor in possession of the same as on" 1.3.1974 and has further held that the land was a non-agricultural land.

4. Being aggrieved by the said order, the deceased 13th respondent filed a Writ Petition before this Court in W.P.No.4629/79. This Court by order dated 4.1.1984 allowed that Writ Petition and remitted the matter to the Land Tribunal for fresh disposal after holding fresh enquiry in compliance with Rule 17 of the Karnataka Land Reforms Rules, 1974 (for short "the Rules"). In view of the contention of the petitioner that the land in question is not an agricultural land, this Court directed the Land Tribunal to decide as a preliminary issue whether the petitioner's application is maintainable in view of the Decisions of this Court in *BALESHA RAM KHOT AND ORS. v. LAND TRIBUNAL, CHIKODI AND ORS.* 1. 1978 (1) KLJ 116 and *GOPALAPPA v. GURUSHANKARAI AH AND ORS.* 2. 1983 (2) KarLJ 149 That, after the remand, the Land Tribunal held an enquiry and passed an order dated 5.12.1987. The Chairman of the Land Tribunal has held that, as the land was converted for non-agricultural purposes and as the same was acted upon by the parties, the 13th respondent is not entitled for any reliefs. However, in view of the majority opinion, the 13th respondent was ordered to be registered as an occupant. It is this order which is impugned in this Petition by the petitioner.

5. Sri B.V. Acharya, learned Senior Counsel, appearing for the petitioner, has contended that, the land in question was converted from agricultural purpose to non-agricultural purpose, as per the order dated 20.6.1950 passed by the then Collector, Dharwad District, Dharwad. At that time, one Rachappa Murugappa Benni was a tenant of the said land. He did not have any objection for conversion. The owner took possession of the same from the said Benni and his name came to be deleted in the Revenue Records as per the order made by Tahsildar and the same was recorded as per M.E.No.686. That after the land was converted, the property was given a Municipal number, namely, CTS No. 2058, Ward Extension of Nagashettikoppa, Hubli; and, the 13th respondent purchased an extent of 3 acres of converted land from the sons of original owner under a registered Sale Deed dated 12.9.1969 for a sum of Rs. 15,000/-. He, in turn sold different extent of land, out of the aforesaid 3 acres in favour of various persons under registered documents. After the land was purchased by the 13th respondent, the land was again bifurcated assigning C.T.S.Nos.2058/A and 2058B. The land purchased by the 13th respondent was given No. 2058/B and the remaining land was given No. 2058/A, out of which the petitioner-Society

purchased an extent of 7 acres, and formed 81 plots and allotted the same to its members. All these sites are given C.T.S.Nos. 2058/A/2 to 2058/A82, of Ward Extension, Nagashettikoppa, Hubli. In view of the land being converted for non-agricultural purpose long prior to 1.3.1974 and the land not being an agricultural land as on 1.3.1974, the application of the 13th respondent was not maintainable and the Tribunal has no jurisdiction to go into any claim for occupancy.

6. Sri P. Vishwanatha Shetty, the learned Senior Counsel, appearing for the legal representatives of the deceased 13th respondent, has contended that the land in question is not converted for non-agricultural purpose. Even if it is held that it was so converted in the year 1950, on account of its continuous use for agricultural purpose, it shall be treated as an agricultural land. He has further contended that the order of conversion, if it is held to have been made, it is invalid and inoperative as the same was made in violation of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short "the BTAL Act"). Elaborating his arguments, Sri Shetty has contended that, the petitioner has been a tenant in respect of the land in question from 1947-48. His name finds a place in the revenue records from the year 1951 -52. The order of conversion was made without notice to the tenant and without his knowledge and consent; therefore it is violative of the provisions of the BTAL Act. Even otherwise, as the terms of the order of conversion was not complied with, the Land ceased to be a non-agricultural land and, therefore, the application of the 13th respondent is maintainable and as the 13th respondent is a tenant, the order granting occupancy rights in his favour is legal, valid and does not call for interference.

7. The 13th respondent, in his statement of objections has also contended that, the Writ Petition by the Society is not maintainable as the Society has no right to purchase the agricultural land and as such it is not the owner; The transactions by the Society is void as it is violative of Sections 69-B and 79-C of the Act; The Society is not in existence. He has been a tenant and his name was shown in Record of Rights from the year 1951-52 as per M.E.No.1208 and the Petition is liable to be dismissed in view of W.P.No.20303/93 being dismissed as withdrawn.

8. In view of the aforesaid contentions, the following Questions would arise for Consideration :-

(i) Whether the land in question was a non-agricultural land as on 1.3.1974 and as such the Land Tribunal did not get jurisdiction to examine the claim for occupancy ?

(ii) If point No. (i) is held to be in the negative, whether the 13th respondent has proved his tenancy in respect of the land in question ?

9. Before I proceed to consider the aforesaid questions, it is not inappropriate to state certain facts which are not in dispute and they are as follows : That in the year 1965, the 13th respondent filed a suit in LC.No.346/65 against one Chandrakantha, the first son of Sirasappa Prathama Setty for a judgment and

decree for permanent injunction in respect of Sy.No.61. The said suit was decreed against Chandrakantha and the said decree was set aside by the appellate Court in R.A.No.108/71. The petitioner purchased an extent of 7 acres of land from the legal heirs of original owner under a registered Sale Deed dated 12.9.1969, and as there was interference from the 13th respondent, the petitioner states that it filed a suit against the 13th respondent and others in O.S.No.515/71 on the file of the I Additional Munsiff, Dharwad and the said suit came to be decreed. That, in the appeal filed against the decree there is no stay. That in the said suit, the learned Munsiff issued an order of temporary injunction restraining the 13th respondent and others from interfering with the possession of the Society of the land in question. The appeal filed by the 13th respondent against the said order was dismissed and the Revision Petition filed before this Court was also dismissed. The 13th respondent and other defendants in O.S.No.515/71 filed another suit against the petitioner and others in O.S.No.453/72 on the file of the Principal Munsiff, Hubli. The said suit was dismissed on merits by the learned Munsiff against the petitioner and some other defendants by judgment and decree dated 29.11.1973. In the said suit an issue, namely Issue No. 9 was raised regarding the conversion of the land in question, and the learned Munsiff has held that the entire Sy.No.61 including the suit land has been converted into non-agricultural purpose and the said judgment and decree has become final.

11. This Court in its earlier order dated 4.1.1984 in W.P.No.4629/79 has directed the Land Tribunal to decide, as a preliminary issue, whether the petitioner's application is maintainable, in view of the Decisions of this Court reported in 1978(1) KLR 116 and 1983 (2) KarLJ 149. It is no doubt true that the Land Tribunal has not raised any issue as a preliminary issue. However, the Land Tribunal proceeded to decide the case on all issues including the question of maintainability. The learned Counsel appearing on both the sides have also requested to decide the Petition on merits not being influenced by the fact that the Land Tribunal has failed to decide the question of maintainability as a preliminary issue. Accordingly this Petition was heard on all points including the question of maintainability.

POINT No. (i) :

12. The principal contention of the Petitioner is that, the land in question was diverted in the year 1950 for non-agricultural purpose and the possession of the land was taken from the then tenant as per mutation Entry No. 686, Where once the land was shown to have been alienated for non-agricultural purpose as on 1.3.1974, it is not a "land" coming within the purview of the Land Reforms Act, in view of the meaning of expression "land" defined in Section 2A(18) of the Act. The Land Tribunal gets no jurisdiction to examine the claim of tenancy in respect of the land not covered by the provisions of the Act.

13. As against this, the contesting respondent has contended that the allegation of conversion of land in the year 1950 is not true, and even if it is true, it is

invalid and inoperative as the same has been made in violation of the provisions of the BTAL Act. Further it was contended that even if it is held that there was no infraction of the provisions of the BTAL Act, at the time of granting diversion of the land, the order becomes inoperative for non-compliance of the terms of the order, and the land, on account of its continuous user for agricultural purpose shall be treated as an agricultural land and therefore the contention that the Land Tribunal has no jurisdiction to enquire into the claim of occupancy is without substance.

14. The Petitioner in support of his contention that the land in question was diverted from agricultural use to non-agricultural use has produced a copy of the Sanad dated 6.6.1950 issued by the Assistant Collector, Dharwad Division, Dharwad, before the Land Tribunal. It reads -

"No.LN.A. S.R.-580 Dharwar, 6.6.50.

Read the case papers ending with the Mamlatdar, Hubli's No. LN.A.S.R.-259/2.6.50.

ORDER:

In this case, the holder of S.Nos. 61 and 78 of Nagashettikoppa, Taluka Hubli, requests for grant of non-agricultural permission in respect of the said S.Nos. for residential purpose. The Mamlatdar after enquiry reports that the applicant-holder is willing to pay the non-agricultural assessment and to abide by the conditions that may be imposed, and recommends grant of the non-agricultural permission applied for. Hence, the non-agricultural permission in respect of S.No.61 measuring A.11-33 G. and 78 measuring A.7-35 G. of Nagashettikoppa is hereby granted to the applicant on payment of non-agricultural assessment of Rs. 74-4-0 and Rs. 49-4-0, respectively, which is liable for revision after a period of thirty years by the rules and orders then in force, subject to the following conditions:

(i) The plots should be used only for residential purpose and no factory etc., should be erected thereof.

(ii) Only 1/2 of the area of each of the plots should be built over.

(iii) Not more than three storied buildings should be built over.

(iv) The construction of the buildings should be completed within three years from the date of this order.

(v) This non-agricultural permission is subject to the provisions contained in the B.T. & A.L Act, 1948."

The Petitioner has also produced the extract from the Mutation Register in respect of mutation Entry No. 686, wherein it is stated that the name of Rachappa Murugappa Benni, the protected tenant was deleted as per order of the Tahsildar dated 28.6.1954. In addition to this the petitioner has also produced

the Sale Deeds executed by the sons of the original owner in favour of the Society and also in favour of 13th respondent, in which the property has been described as converted land bearing C.T.S.No.2058 of Ward1 Extension, Hubli. The 13th respondent after purchasing 3 acres of land out of C.T.S.2058 sold certain extent of land out of the lands purchased by him in favour of the third parties. The 13th respondent and 3 others have filed an original suit in O.S.No.453/72 on the file of the Principal Munsiff at Hubli against the petitioner and others for perpetual injunction restraining them from interfering with their possession of 3 acres of land. It is material to see that Sy.No.61 of Nagashettikoppa Village was described by the 13th respondent as a converted land, bearing C.T.S.No. 2058. He has admitted in the plaint that the entire Sy.No.61 was converted into a non-agricultural use and the C.T.S. authorities numbered it as C.T.S.No.2058, and, in fact an issue was specifically raised in the said suit in regard to the conversion of the said land. The relevant issue reads thus :

"9. Do the plaintiff prove that the entire R.S.No.61 an extent of 11A-32G became non-agricultural land with effect from 1.8.50."

and the said issue was answered in the affirmative and it is not in dispute that the said judgment and decree became final as no appeal was preferred by the 13th respondent.

14. The expression "land" is defined in Section 2A (18) of the Act and the same reads as follows :

""land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and thope, but does not include house site or land used exclusively for non-agricultural purposes."

By virtue of Section 44, all lands held by or in possession of tenants immediately prior to 1.3.1974, excepting those which have been excepted shall with effect from 1.3.1974, transferred to and vest in the State Government. Section 45 of the Act confers a right on every person who was a permanent tenant, protected tenant or other tenant or a lawful sub-tenant for being registered as an occupant in respect of the land of which he was a permanent tenant, protected tenant or other tenant or a lawful sub-tenant etc. Section 48 deals with the constitution of the Land Tribunal and Section 48A deals with the enquiry by the Land Tribunal. Having regard to the definition of the expression "land" provided under the Act, it is clear that any land which is a house site or land exclusively used for non-agricultural purpose or land which is not capable of being used for agricultural purposes cannot be treated as "land" for the purpose of this Act and the land diverted to non-agricultural purpose in accordance with the provisions of the Land Revenue Act would not fall within the purview of the Act. If the land is not a land which is used or capable of being used for agricultural purpose or purposes

subservient thereto, having been alienated for non-agricultural purpose, in accordance with the provisions of the relevant Land Revenue Act, it cannot be a subject matter of enquiry before the Land Tribunal as the Land Tribunal gets no jurisdiction to enquire into the claim for occupancy in respect of such lands. The question whether the land is an agricultural or non-agricultural (and, is a jurisdictional one and therefore it is necessary to decide the said question before entering into the controversy between the parties regarding tenancy.

15. From the facts pleaded by the parties and the material placed, there is no dispute that prior to 1950, the land was an agricultural land. That in the year 1950, it is the contention of the petitioner that the land was diverted for non-agricultural purpose and, therefore, the Land Tribunal has no jurisdiction to enquire into the claim for occupancy. The contention of the 13th respondent is that the land was not converted and even if it was converted it was in violation of the provisions of the BTAL Act and therefore it is not a converted land.

16. Section 65 of the Bombay Land Revenue Code, 1879, deals with the grant of permission to use the land for any purposes other than the agricultural. The power to grant permission is conferred on the Collector. The Collector may sanction permission for diversion of the land from agricultural purpose to non-agricultural purpose subject to the provisions of the BTAL Act. Section 15 of the BTAL Act deals with the termination of tenancy by surrender and the same reads as follows:

"15(1) A tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlord;

Provided that such surrender shall be in writing and verified before the Mamlatdar in the prescribed form.

(2) Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered for the like purposes, and to like extent and in so far as the conditions are applicable subject to the like conditions are as provided under Sections 31 and 31A for the termination of tenancy.

(2A) The Mamlatdar shall in respect of the surrender, verify under Sub-section (1) hold an enquiry and decide whether the landlord is entitled under Sub-section (2) to retain the whole or any portion of the land so surrendered and satisfy the extent and particulars in that behalf.

(3) The land, or any portion thereof, which the landlord is entitled to retain under Sub-section (2) shall be liable to be disposed of in the manner provided under Clause (3) of subsection 2 of Section 32-B."

By virtue of Section 15 of the BTAL Act, a tenant may surrender his tenancy in favour of the landlord or the tenancy may be terminated by the landlord under Sections 31 or 31A of the Bombay Land Revenue Code, but the surrender of tenancy by the tenant would only be valid and binding on him, if it was in writing and verified by the Mamlatdar, whose duty is to ascertain whether the surrender

was voluntary and was not on account of fraud or trickery or undue pressure brought upon by the landlord. It is, therefore, clear that if the land is in occupation of a tenant, no diversion of the same can be granted by the Collector without there being a surrender of the tenancy by the tenant or without there being an opportunity of being heard provided to the tenant. It is the case of the petitioner and his predecessor in title that, one Rachappa Murugappa Benni was the tenant. The allegation of the 13th respondent that he was a tenant from 1947-48 has been denied by the original owner. On the other hand, it is the specific case of the 13th respondent that he has been a tenant of the land in question from 1947-48 and he neither surrendered the tenancy nor gave no objection for diversion of the land. In support of his case, the 13th respondent has produced certain documents such as pahani extracts from 1951-52 and onwards and also an extract of Mutation Register relating to Mutation Entry No. 1208.

17. It is seen from the records that the 13th respondent instituted a suit against one Chandrakantha, the first son of the original owner in L.C.No.346/65. The said suit was presented on 13.9.1965. Mutation Entry 1208 was made on 3.12.1965 pursuant to the wardi filed by the 13th respondent on 16.9.1965. It is seen from the extract of Mutation Entry No. 1208 produced by the 13th respondent before the Land Tribunal that M.E.1208 was effected on 16.11.1965 pursuant to the wardi made by the 13th respondent in respect of Sy.No.61 stating that he has been cultivating the said land from 1951-52. The Mutation Entry does not indicate whether any notice was issued to the holder of the khata of the said land and it also does not indicate the extent of land in Sy.No.61 in respect of which the entry has been made. Admittedly Sy.No.61 measures 11-32.9 1/2 guntas. I think it is clear from this document that all entries in R.T.C. extracts must have been made pursuant to the Mutation Entry No. 1208. In addition to this the 13th respondent has also produced certain receipts said to have been issued by Chandrakantha. The originals of those receipts are not produced. The petitioner has produced M.E.No.686 which was made on 30.7.1955 and approved by the Competent Officer on 24.12.1955 deleting the name of Rachappa Murugappa Benni, the protected tenant. In view of this Entry, it was incumbent on the part of the revenue authorities to issue notice to the owner of the land in question to provide him an opportunity of being heard before any Entry was made in the Mutation Register. It is not the case of the 13th respondent that M.E.No.1208 was made after providing an opportunity of being heard to the original owners. The said Entry was made, on the basis of the wardi of the 13th respondent to record cultivation of land by the 13th respondent from 1951 -52. The receipts produced by the 13th respondent, even if they are taken to be true, they are all subsequent to 1955, and they are of no assistance to establish the tenancy of the 13th respondent on the date of order sanctioning diversion. No other document was produced by the 13th respondent in support of his contention that he has been a tenant from 1947-48 to 1951-52. The copy of the extract of R.T.C. from 1951-52 produced by him indicates that it appeared to

have been made pursuant to M.E.No.1208 which was admittedly made in the month of September 1965. These documents are not sufficient to prove the tenancy of the 13th respondent on the date on which the land was diverted for non-agricultural purposes. If the 13th respondent fails to prove that he was a tenant as on the date of the order of the Collector granting diversion of the land in question from agriculture to non-agricultural purposes, it is not open for him to contend that the land was not converted for non-agricultural purposes at all. If the 13th respondent was not a tenant, as on the date of the order of diversion of the land in question, it is not open to him to contend that the order of diversion is void for being violative of the provisions of BTAL Act, in the absence of any challenge to it by the real tenant.

18. It may be seen from the records produced by the parties that in the year 1969, the 13th respondent has accepted the fact that the land was in fact converted and C.T.S. number was given in respect of the said land, and he purchased 3 acres of converted land out of the entire land in Sy.No.61 of Nagashettikoppa and thereafter there was a bifurcation of C.T.S. number. The land purchased by the 13th respondent was given No. 2058(B) and the land retained by the vendors of the petitioner and subsequently sold in favour of the petitioner was given C.T.S. No. 2058(A). It is also on record that the 13th respondent after having purchased 3 acres of land out of the converted land sold certain extent of land under different Sale Deeds in favour of different persons and khatha of those lands were subsequently registered in the names of respective purchasers in the Assessment Register of Hubli-Dharwad Municipality. It is no doubt true that in the Sale Deed in his favour, it is stated that he was a tenant, without any reference to the duration. If he were to be tenant in 1947-48, it would have been positively stated. It is also not disputed that this land is situated within the Municipal Corporation area and is surrounded by constructions. That, in O.S.No.453/72 the suit filed by the 13th respondent and others against the petitioner and others, it was stated in the plaint that the entire Sy.No.61 was converted for non-agricultural purpose, out of which the plaintiff purchased 3 acres of land and in the said suit a specific issue was raised with regard to the nature of the land and the issue was answered in the affirmative holding that the entire land bearing Sy.No.61 was converted for non-agricultural purpose.

19. In view of the specific admission of the 13th respondent in the Sale Deed and also in the plaint in O.S.No.453/1972, it is now not open to the 13th respondent to assert that the land is not a converted land. However, the 13th respondent in support of his case, placed reliance on the application filed by the original owners for resumption of the land u/s 14 of the Act. The application was misconceived and it was specifically pleaded in the application that the land is not an agricultural land but as the 13th respondent claims it to be an agricultural land, the application was filed for declaration that it is not an agricultural land and in the alternative a prayer was made for resumption of the land. The said application was dismissed on the ground that the prayer for declaration that it is

not an agricultural land was barred by time and the application for resumption was not maintainable as the land was stated to be a non-agricultural land. Therefore the resumption proceeding would not be of any assistance to the 13th respondent.

20. The 13th respondent who has taken advantage of conversion in order to purchase the land and got the khatha registered in his name shall not be allowed to contend that the remaining land of the said survey number is an agricultural land. No party shall be allowed to approbate and reprobate.

21. Dealing with a situation where, one of the parties to a suit after taking advantage of a compromise decree in an earlier suit, to receive certain sum of money payable under a decree in another suit, contests the claim of his opponent, that the compromise decree between them in the earlier suit shall be executed only in terms of the decree and not by way of a suit to redeem the mortgage, in order to gain a different advantage, the Privy Council in AIR 1933 167 (Privy Council) has held that -

"** Having thus, almost in terms offered to be redeemed under the usufructuary mortgage in order to get payment of the other mortgage debt, the appellant, their Lordships think, cannot now turn round and say that redemption under the usufructuary mortgage had been barred nearly 17 years before he so obtained payment. It is a well accepted principle that a party cannot both approbate and reprobate. He cannot, to use the words of Honeyman, J., in SMITH v. BAKER (8 C P 350) :

"at the same time blow hot and cold. He cannot say at one time that the transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and at another say it is void for the purpose of securing some further advantage."

22. The 13th respondent having understood that the land bearing Sy.No.61 was converted for non-agricultural purposes and having acted upon the same to take advantage of diversion, shall not now be allowed to turn round and say that, the land is not a non-agricultural land.

23. It was further contended that the Collector permitted the conversion subject to certain terms and conditions and the owner has failed to comply with those conditions. Non-compliance with the terms and conditions of the order of diversion has rendered the order ineffective and unenforceable and he being in possession of the land as a tenant, is entitled to be registered as an occupant.

24. The 13th respondent derives support for his contention from an unreported Judgment of this Court in W.A.No.1482/844 4. DD 17.9.1986. That in the said case the conditions in the order of conversion were ;

"(i) The construction of the building should be commenced within six months and completed within three years from the date of the order failing which the N.A. permission will automatically lapse and the demand to be withdrawn.

(ii) This permission is subject to the provisions of the B.T.& A.L. Act, 1943."

The admitted facts in that case were that, the appellant Yellappa was a tenant as on the date of conversion. He was not a party to the proceedings before the Deputy Commissioner in respect of the application for conversion. He was not heard. In view of the Judgment of this Court in 1969(2) Mys.L. J. 184 5. Puttamma and Ors. v. The M.R.A.T. and Anr., that if a tenant is in possession of the land in respect of which permission for diversion is sought and the landlord cannot secure possession except after eviction of the tenant, the appropriate stage at which the application for conversion could be made is normally the stage when the landlord secures possession from the tenant, this Court has held that the permission for conversion could be of little use. It is true that this Court in Smt Puttamma and Ors. v. The M.R.A.T. and Anr., has held that, where the applicant for permission for conversion to non-agricultural purpose u/s 95(2) of the Mysore Land Revenue Act, is not in possession of land but a tenant is, and the tenant opposes the application, permission cannot be granted as it would be a futile permission. Such a situation did not arise in this case. The order of conversion did not impose any condition that the non-agriculture permission will automatically lapse and the demand be withdrawn, on the failure of the owner to comply with the terms of the order. The 13th respondent has failed to prove that he was a tenant as on the date of the order of conversion. He has further failed to prove that the tenant as on the date of the order was not heard as such tenants have not challenged the order of conversion. The Decision in W.A.No.1482/84 is therefore inapplicable to this case.

25. It was next contended by the 13th respondent that in view of the land being continuously used for agricultural purpose, it shall be treated as an agricultural land. The contention is unsustainable. Where once the land was permitted to be used for non-agricultural purpose, in accordance with the provisions of the Land Revenue Act and the same was-not withdrawn by the Competent Authority, or was not held to be invalid, the land shall continue to be a land for the purpose for which it was diverted. Just because the land was used some time for a purpose other than the one for which diversion was granted, the use cannot render the order ineffective and convert the land into an agricultural land.

26. In State of Karnataka and others Vs. Shankara Textiles Mills Ltd., the Supreme Court considering the question, whether the land can be deemed to have been permitted to be converted for non-agricultural use merely because it was used for non-agricultural purpose although, admittedly, no permission u/s 95(2) of the Revenue Act was taken, has held -

"The mere fact that at the relevant time the land was not used for agricultural purposes or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would, in particular,

render the provisions of Section 95(2) of the Revenue Act, nugatory. Such an interpretation is not permissible by any rule of the interpretation of statutes."

The Supreme Court, after ruling that the use of land for non-agricultural purpose would not convert the agricultural land into non-agricultural land in the absence of permission for conversion u/s 95(2) of the Revenue Act, over-ruled the Judgment of this Court in Mysore Feeds Ltd. Vs. State of Karnataka, wherein it was held -

"13. A land which is agricultural may cease to be used for agriculture for various reasons. Theoretically, such a land may be capable of being used for agriculture and may fall within the definition of "land" defined in Section 2A(18) of the Karnataka Land Reforms Act. But, the definitions are always subject to context and should be read in a practical manner.

14. In the absence of any specific finding that these lands were being used as agricultural lands, the Special Dy. Commissioner erred in assuming them to be agricultural lands by the sole fact that the petitioner sought permission for using the lands for non-agricultural purposes u/s 95(2) of the Land Revenue Act."

It is therefore clear that a land cannot be deemed to have been converted for non-agricultural purpose, merely on account of its use for such purpose, in the absence of any permission u/s 95(2) of the Land Revenue Act. Similarly where a land is converted for non-agricultural purpose cannot be treated as an agricultural land in the absence of any order withdrawing the demand or cancelling the permission granted u/s 95(2) of the Land Revenue Act.

27. In view of the aforesaid discussion, it is clear that the land in question was diverted by the Collector, Dharwad, for non-agricultural purpose in the year 1950 and the 13th respondent has failed to prove that he was a tenant as on the date of the order of conversion and the order of conversion is therefore invalid and inoperative, as he was not a party to these proceedings. The land in question being a non-agricultural land as on 1.3.1974, is not a "land" as defined by Section 2A(18) of the Act and therefore, it did not fall within the purview of the Act. It also did not vest in the State Government u/s 44 of the Act. Therefore the Land Tribunal did not get jurisdiction to enquire into the claim for occupancy.

28. In D.S. LAKSHMINARAYANA RAO v. THE LAND TRIBUNAL, DODDABALLAPUR AND ORS. 8. ILR 1980 KAR 283 this Court has held that the conversion of land would be complete when once permission was granted or to deemed to have been granted and actual levy of fine is only a subsequent formality. Such a land is not a land as defined in the Act and therefore did not attract the provisions of the Act. It also did not vest in the State u/s 44 of the Act and the Land Tribunal has no jurisdiction to consider the claim of the claimants.

29. In Gopalappa v. Gurushankaraiah² dealing with the application of the provisions of the Karnataka Land Revenue Act vis-a-vis the Karnataka Land Reforms Act, 1961, in the context of the jurisdiction of the Land Tribunal to

enquire into the claim for occupancy, this Court has held as follows :

"The two enactments, namely, the Land Reforms Act and the Land Revenue Act are distinct and different. Permission to convert an agricultural land for non-agricultural purpose has to be obtained from the prescribed authority under the Land Revenue Act. A person aggrieved by grant of such permission has to challenge the same before the appropriate authorities prescribed thereunder. He cannot by-pass the remedy and get that order invalidated before the Land Tribunal constituted under the Land Reforms Act. The Land Tribunal has no power to go behind the statutory order according permission to convert the land for non-agricultural purpose under the Land Revenue Act."

This Court so holding rejected the contention of the tenant that the land was still under cultivation and the permission accorded to use the land for non-agricultural purpose did not take away the jurisdiction of the Land Tribunal to investigate into the nature of the land.

30. In NARASIMHA SETTY v. STATE OF KARNATAKA 9. 1978 (1) KarLJ 208 this Court has held that -

"the duties of Tribunal as defined u/s 112(b) of the Act, are confined to decide whether a person is tenant or not in respect of lands which fall within the definition of Section 2A(18) of the Act which does not include house sites and lands used exclusively for non-agricultural purposes. Therefore, there is total lack of jurisdiction for the Land Tribunal, Tumkur, to entertain the application u/s 48A of the Act and grant occupancy rights in favour of third respondent in respect of lands in question, which were alienated for non-agricultural purposes like house sites and industrial purposes."

30. The documents such as receipts, entries in the revenue records and the mutation entry are all subsequent to 1955 and they would infuse no confidence and as such they cannot be relied upon nor do they serve any purpose when once it was held that the land in question was converted for non-agricultural purpose. The Decision of this Court in Balesha Rama Khot and Ors. v. Land Tribunal, Chikodi¹ has no application to the facts of this case.

31. For the reasons aforesaid, I answer Point No. (i) in the affirmative.

32. In view of my finding on Point No. (i) in the affirmative, Point No. (ii) would not survive for consideration.

33. In view of the finding that the land in question was converted for non-agricultural purpose, the application of the 13th respondent for grant of occupancy rights in respect of Sy. No. 61 measuring 7 acres of land of Nagashettikoppa is not maintainable as the Land Tribunal would get no jurisdiction to enquire into the claim of occupancy.

34. Therefore, the Petition is entitled to succeed. Accordingly, I pass the following order -

- (i) Writ Petition is allowed. Rule made absolute.
- (ii) The order dated 5.12.1987 passed by the Land Tribunal, Hubli, in Case No. KLR.SR.NG. P3 is hereby quashed as without jurisdiction.
- (iii) The application of the 13th respondent before the Land Tribunal is dismissed as not maintainable.
- (iv) In the circumstances of the case, the parties are directed to bear their own costs.