
(1987) 03 KAR CK 0002
In the Karnataka High Court
Case No : W.A. No's. 1938 and 1939 of 1986

Special Deputy Commissioner

APPELLANT

Vs

Bhargavi Madhavan

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 95, 95 (3A), 95 (3B)
Karnataka Town and Country Planning Act, 1961 — Section 14, 15, 16, 76 M

Citation : (1987) ILR (Kar) 1260

Hon'ble Judges : Ramakrishna, J; Rama Jois, J

Bench : Division Bench

Advocate : S.V. Jagannath, for the Appellant; R.B. Brahmavar, for the Respondent

Final Decision : Allowed

Judgement

Rama Jois, J.—These appeals which involve the question of the legality of the grant of permission for conversion of vast areas of agricultural lands situate in the green belt area within the Bangalore City Planning area for non-agricultural use, are a glaring example to show how good cases for the Government are allowed to be lost before the Courts and public Interest is allowed to suffer which could thereafter be attributed to decisions of the Court.

1A. These two Writ Appeals are by the Special Dy. Commissioner, Bangalore Dist, Bangalore and the State of Karnataka, by its Secretary, Revenue Department, Vidhana Soudha, Bangalore, against the order of the Learned Single Judge dismissing the two Writ Petitions filed by them in which the validity of the order of the Karnataka Appellate Tribunal had been challenged by the appellants.

2. The facts of the case, in brief, are as follows :

Smt. Bhargavi Madhavan, one of the respondents in the appeals, is the owner of 15 acres 15 guntas of land in Sy. No. 19 of Guni Agrahara Village, Hesaraghatta Hobli, Bangalore North Taluk, Bangalore District. She had made an application

seeking permission for conversion of the aforesaid land for non-agricultural use under Sub-section (3) of Section 95 of the Karnataka Land Revenue Act ("the Act" for short). That application was rejected by an order dated 12-12-1983 by the Special Deputy Commissioner, Bangalore District. Sri Muthukutty Vaidhyan is the owner of 15 acres 34 guntas of land of the same Village. He also applied for grant of per-mission for conversion of the land for non-agricultural use under Sub-section (3) of Section 95 of the Act. That application was also rejected by the Special Deputy Commissioner, by another order dated 12-12-83 (vide Annexure-B). Aggrieved by this order respondents herein had preferred earlier appeals before the Tribunal. The Tribunal not being satisfied with the reasons given by the Special Deputy Commissioner, set aside the order and remitted the matter for reconsideration. Again, the Special Deputy Commissioner by his order dated 24-5-85 rejected the application of the respondents. Aggrieved by the said order, the respondents again appealed to the Tribunal, The Tribunal found that none of the reasons given by the Special Deputy Commissioner for rejecting the permission were tenable. Having regard to the reasons given by the Special Deputy Commissioner that the view of the Director of Town Planning was against the grant of permission, the Tribunal pointed out that the view taken by the Special Deputy Commissioner was in the teeth of the Judgment of this Court in 1974 (1) Kar. L.J. 67. As regards the reason given by the Special Deputy Commissioner that granting of permission would create a mushroom growth of residential pockets all round Bangalore and create liability on the local bodies and the Government for providing basic civic amenities and might lead to insanitary conditions and creation of sites of inadequate dimensions resulting in health hazards to the residents, the Tribunal was of the view that this could have been remedied by imposing conditions which he had the authority to impose under Clause (4) of Section 95 of the Act. In the result, the Tribunal allowed the appeals. The operative portion of the order reads :

"Both the appeals are allowed and the order of the Spl. Deputy Commissioner, Bangalore District, Bangalore, passed in AIN/SR(N) 51 and 52/83-84 dated 24-5-85 is set aside. The appellants are entitled to have their lands diverted for non-agricultural use and the Spl. Deputy Commissioner, Bangalore District, Bangalore shall sanction the diversion of these lands for non-agricultural use subject of course of imposing such conditions as are permissible within Clause (4) of Section 95 of the Act so as to secure the health, safety and convenience and in order to secure that the dimensions, arrangement and accessibility of the sites are adequate for health and convenience of the occupiers and that they do not contravene the provisions of any law relating to town and country planning or the erection of buildings and shall also levy the conversion fine as prescribed under the rules. No costs The original Judgment be placed in Appeal No 241/85 and a copy thereof shall be placed in the other connected appeal No 212/85 for purpose of reference and completion of records."

Aggrieved by the said order the Special Deputy Commissioner and the State of Karnataka preferred two Writ Petitions. By order dated 26th June 1986 the Writ

Petitions were dismissed by the learned Single Judge who held that the grounds on which the Deputy Commissioner rejected the application were found to be factually incorrect and therefore there was no ground to entertain the petition. It is against that order these two appeals have been preferred.

3. The ground urged in the appeals was that the permission directed to be accorded by the Tribunal was in clear infraction of Section 95(3A) of the Act, according to which permission for conversion of agricultural lands for non-agricultural use could not be granted as the lands in question fell within the green belt area. The provision on which reliance is placed by the appellants were introduced into the Karnataka Land Revenue Act by Amendment Act of 1984 on 28th April 1984. They read :

"(3A) The State Government may, with a view to protecting and improving the environment, by notification declare as Green Belt any area lying within the limits of or within the prescribed distance from the limits of the Cities under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977) or City Municipalities, Town Municipalities and Notified areas constituted or deemed to be constituted under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964) and different distances may be so prescribed for each such City, City Municipality, Town Municipality or Notified Area.

(3B) Notwithstanding anything contained in this Section, no permission shall be granted or held for the purpose of agriculture lying within the limits of the Green Belt to any other purpose."

This provision empowered the Government to declare as "Green Belt" any area lying within the limits of the prescribed distance from, the limits of the cities. In order that green belt is brought into existence, two conditions should be fulfilled. They are :-

"(1) The distance from the limits of the cities named with in which the Green Belt area could be declared by the State Government by issuing an appropriate notification has to be prescribed by making a rule.

(2) After such prescription, to issue a notification specifying the actual green belt area within such distance."

The object and purpose of the provision is obvious. It is intended to give environmental protection to growing cities and is designed in the interest of public health, protection and development of greenery for that purpose etc. Therefore, the provision cast a duty on the part of the State Government to implement the Section without delay as any delay would certainly be utilised by those who are eager to get their agricultural land lying in the vacancy converted for non-agricultural use and by such action the provision would be met with a fait accompli. In fact the main ground urged in the appeal is that the order of the Special Deputy Commissioner rejecting the permission sought for was correct and the order of the Tribunal contravenes Section 95(3A) and (3B) of the Act.

4. But to our dismay, the desire of the Government to implement the provision enacted by the Legislature is found expressed only in the grounds of appeal. Whereas its inaction as also actions are such as would frustrate the object and purpose of the provision. It is not disputed by the learned Counsel for the State that though the two sub-sections came into force on 28-4-1984, it is, only after more than 1 1/2 years thereafter i.e. on 24-10-1985 the State Government framed the rules prescribing the distance within which Green Belt area could be declared. The said rules read thus :

"Whereas the draft of the following rules further to amend the Karnataka Land Revenue Rules, 1966 was published as required by Sub-section (1) of Section 197 of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964) in notification No GSR 101 (RD 48 LGP 84 dated 18th April, 1985) published in Part IV-2C (i) of the Karnataka Gazette (extraordinary) dated 18th April 1985, inviting objections or suggestions from all the persons likely to be affected thereby on or after one month from the date of publication in the Official Gazette ; AND WHEREAS, the said Gazette was made available to the public on 18th April, 1985 ; And Whereas, the objections and suggestions received have been considered by the Government ;

Now, therefore, in exercise of the powers conferred by Section 197 of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964), the Government of Karnataka hereby makes the following rules namely :-

(1) Title and commencement -- (1) These rules may be called The Karnataka Land Revenue (Amendment) Rules, 1985.

(2) They shall come into force at once.

2. Insertion of new Rule 102 B : After Rule 102 A Karnataka Land Revenue Rules, 1966, the following rule shall be inserted namely :--

"102 B Limits of green belt : The State Government may in respect of the cities, city municipalities, town municipalities or notified areas specified in column (2) of the Table Below, declare any area lying within the limits thereof or within the distance from such limits specified in the corresponding entries in column (3) of the said Table as green belt under Sub-section (3A) of Section 95 of the Act.

TABLE

Sl. No. Places Distances

1 2 3

1. Bangalore City - under the Karnataka Municipal Corporations Act, 1976 18 Kms.

2. The Cities of Belgaum, Gulbarga, Hubli-Dharwad, Mangalore & Mysore respectively under the provisions of Karnataka Municipal Corporation Act, 1976 10 Kms.

3. All City Municipalities under the Karnataka Municipalities Act, 1964 8 Kms.
4. All Town Municipalities - under The Karnataka Municipalities Act, 1964. 8 Kms
5. Any Notified area - under the Karnataka Municipalities Act, 1964 6 Kms

"NOTE : The distances specified in column (3) shall be calculated by drawing a line parallel to the contour of the limits of the Corporations, cities, town municipalities and notified areas specified in column (2)."

5. As can be seen from the contents of the notifications, as far as Bangalore City constituted under the Karnataka Municipal Corporations Act, 1976, is concerned, the distance prescribed is 18 Kms from the Corporation area. After prescribing of the distance by promulgating the above rule, it was necessary for the State Government to issue a notification declaring Green Belt area. The learned Counsel for respondents submitted that till date no such notification has been issued by the State Government and this fact is not controverted by the learned Counsel for the State. The learned Counsel for respondents submitted that after the promulgation of the Rules on 24-10-1985 far from issuing any notification declaring the Green Belt, the State Government had issued Circular dated 29-7-1986, by which the revenue authorities were informed that they were not within law in refusing the applications for conversion within the prescribed distance from the cities concerned, as the Government had not yet issued the notification declaring and specifying the Green belt area. The said Circular reads :

GOVERNMENT OF KARNATAKA

No. RD 48 LGP 84

Karnataka Government Secretariat, 5th Floor, 3rd Stage, M.S. Bldgs., Bangalore

Dated: 29-7-1986

CIRCULAR

Sub : Sanction of diversion/conversion of Agricultural lands into non-agricultural use within the zones of "Green Belt" - clarifications thereon.

It has come to the notice of Government that applications for conversion/diversion of agricultural lands for non-agricultural purposes are being rejected by the competent Revenue Authorities on the ground that the said agricultural land are lying within the area declared as "Green Belt" on the basis of Government Notification No. RD 48 LGP 84 dated 24th October, 1985.

2. The new sub-sections (3A) and (3B) were inserted in Section 95 of the Karnataka Land Revenue Act, 1964 by the amendment made under the Karnataka Land Revenue (Amendment) Act, 1984 (Karnataka Act No. 23 of 1984). Sub-section (3B) is intended to prohibit absolutely the diversion of any land lying within the area declared as Green Belt, to any non-agricultural purpose. Sub-section (3A) provides the mechanism for declaring an area as Green Belt.

3. In order to bring into existence the Green Belt, two actions have to be initiated and completed by the State Government. The first one is to make a rule for identifying the limits within which an area can be declared as Green Belt. This has been done vide Government notification No. RD 48 LGP 84 dated: 24th October, 1985, where under the necessary rules were issued. The other action which is necessary is to issue another notification declaring as Green Belt particular areas lying within the limits of cities and towns or within the prescribed distance from such limits. This notification is yet to be issued. Consequently, there is no area at present which in the eye of law can be regarded as a declared Green Belt.

4 In view of the above legal position, it is hereby clarified that till such time as the notification necessary to actually declare a given area as Green Belt is issued, as contemplated under Sub-section (3A) of Section 95 of the Karnataka Land Revenue Act, it would be impermissible to reject an application for diversion of agricultural land for other purposes in cases where permission for the diversion can otherwise be given u/s 95 of the Act Applications for diversion received u/s 95 of the Act may be examined under that section and either rejected or granted by invoking grounds permissible under the said section and the rules concerning such diversion, and the requirements of the Town and Country Planning Act. If, however, it is found that permission can be accorded u/s 95, then such permission cannot be refused now solely on the ground that the area concerned is lying within a Green Belt, as in the eye of law there is no such Green Belt at present. These instructions would hold good till the notification required for declaring an area as Green Belt is actually issued."

6. While this is the Circular issued by the Government on 29-7-1986, on this very day the Government Advocate had made a submission before this Court, which is recorded while admitting the appeal. The relevant portion of the order reads :

"One of the grounds urged in these two appeals is that the permission if granted will be in contravention of the Karnataka Land Revenue (Amendment) Act, 1984 (Karnataka Act No. 23 of 1984).

Our attention has been invited to Sub-section 3(B), which has been inserted in Section 95 of the Karnataka Land Revenue Act, which imposes an embargo on permission to be granted to divert any land or part thereof assessed or held for the purpose of agriculture lying within the limits of Green Belt to any other purpose.

Counsel has produced before us prima facie material to show that the land in question is located within the Green Belt area."

On 13-8-1986, the respondents produced the aforesaid Circular dated 29-7-1986 and prayed for vacating the interim order and the Government Advocate sought adjournment When the matter came up on 18-8-1986, the Hon"ble Acting Chief Justice and Venkatesh, J, made the following order :

"We are extremely sorry to note that the officers concerned, who have instructed the Learned Government Advocate that there exists a green belt area, appear to have misled the Court.

This is a case in which proper action should be taken against the officers concerned.

The Learned Government Advocate must give the names of the officers concerned and they should appear before this Court at 10.30 a.m. on Friday the 22nd instant, for taking action under contempt proceedings."

(Underlining by us)

Thereafter, on 19-8-1986, the Bench made the following order :

"Pursuant to our order dated August 18, 1986, the Government Advocate has kept the officers in person in Court. He has also produced some Circular dated August 20, 1984, with a plea the officers were guided by the said Circular setting out the green belt area in the Bangalore North and South Taluks and that they had no intention to misguide the Government Advocate or the Court nor they had misguided him.

We have perused the Circular dated August 20, 1984. It gives some indication about the green-belt area ear marked for Bangalore. In the circumstances, we do not want to proceed against the officers. No further action is called for."

Post the appeal for hearing on 22-8-1986."

7. At the hearing, the non-issue of a notification u/s 95(3A) declaring the green belt area and the issue of Circular dated 29-7-1986 was not disputed. The only submission made was that the Circular dated 29-7-1986 was kept in abeyance by Circular dated 29-10-1986 for two months and by Circular dated 4-1-1987 it was kept in abeyance till January 1987 and by Circular dated 3rd March, 1987 it was kept in abeyance till 31st March 1987. But the fact remains, there is no declaration of Green Belt in respect of any of the cities u/s 95(3A) of the Land Revenue Act till now. Thus, though the legislative intention and purpose as is evident from Section 95(3A) of the Act was for protecting the environment of fast growing cities and the provisions came into force as early as on 28-4-1984 itself, the intent and purpose has remained unimplemented on account of the inaction on the part of the State Government. As pointed out earlier, the Government took more than 1 1/2 years just to pre scribe the distance by making an amendment to the Rules on 24-10-1985. Even after the promulgation of the Rules with such great delay, the State Government has not issued the notification specifying the Green Belt till date, though it could have been done by issuing a notification forthwith thereafter. In the meanwhile, as made out by the Learned Counsel for the respondents, innumerable cases permission for conversion have been granted both before and after the Circular dated 29-7-1986. To what extent the provision has been frustrated could be revealed only in an inquiry instituted for that purpose.

8. These circumstances make us to express our deep anguish at the frustration of public interest brought about by the failure to specify the green belt. What is intriguing is that though the Government is contending before this Court that the Green Belt has been brought into existence by virtue of Section 95(3A) of the Land Revenue Act, it has not made any declaration for reasons best known to it and is telling all its officers that there was no green belt and thereby causing the defeat of the legislative mandate incorporated in Section 95(3A) and (3B) and furnishing a ground to the respondents to get these appeals dismissed.

8.A The learned Counsel for the respondents also submitted that large number of such permissions have been granted by the first appellant-Deputy Commissioner before and after the issue of the Circular dated 29-7-1986 under the direction of the second appellant - State Government. He has produced one such order dated 10-3-1986, by which the Special Deputy Commissioner, Bangalore, accorded permission for conversion of an extent of 30 acres of land for non-agricultural use situated within 18 Kms. from the City of Bangalore. The relevant portion of the order reads :

The order shows that it was issued pursuant to the direction of the Government dated 10-12-1985.

9. In the circumstances and for the reasons aforesaid, we dictated an order on 9-3-1987 dismissing these appeals observing that if the Government was failing in these appeals it was only on account of its failure in discharging its duty to implement Section 95(3A) and (3B). We also observed that by the time the Government issues the notification, all the agricultural lands in the proposed green belt might be converted for non-agricultural use leaving the "Green Belt" only in the Section and in the notification, if issued.

10. But before the fate of these appeals were sealed by the transcription of the order and our signing it, we discovered a ground which the appellants, for reasons best known to them, had not urged either in the grounds of appeal or at the time of hearing, which would have ensured the allowing of these appeals. This makes the history of these cases a mystery and the action and inaction of the Government more and more curious.

11. After we dictated the order as indicated above and proceeded to pass an order dismissing these appeals, another batch of appeals, namely, Writ Appeal Nos. 2396 to 2338 of 1986 presented by the State Government itself came up for hearing on 16th March, 1987. We noticed that in the Memorandum of appeals in those cases, the State Government, in, respect of the Bangalore City Planning area, was relying on the Comprehensive Development Plan ("the CDP" for short) approved and published under the provisions of sub-section(4) of Section 23 of the Karnataka Country and Town Planning Act ("the Planning Act" for short), according to which the land concerned in the said appeals as well as in these appeals fell within the "Green Belt Area" earmarked under the C.D.P. approved for the Bangalore Metropolitan Area and contending that the Appellate Tribunal

was in error in issuing a direction to the Special Deputy Commissioner to grant conversion and further in support of the said contention the State Government relied on a Judgment delivered by Doddakale-gowda, J, in Writ Petition Nos. 17132 to 17140 of 1984, dated 29-8-1985, State of Karnataka Vs. Jayashree, In the said case in which the State Government had challenged the legality of a similar order of the Appellate Tribunal issuing a direction to the Special Deputy Commissioner, Bangalore, to grant permission for conversion of land for non-agricultural use, it relied upon the Comprehensive Development Plan approved u/s 23 of the Planning Act, the learned Judge came to the conclusion that in view of the Comprehensive Development Plan, the Deputy Commissioner could not exercise any of his powers u/s 95 of the Act. We expressed our agreement with the said view taken by the learned Single Judge in the said Judgment and allowed the appeals.

12. It was really amazing that in these appeals the State Government did not raise a ground relying upon the Comprehensive Development Plan and the Judgment of this Court in State of Karnataka Vs. Jayashree, referred to above. As seen earlier, the Division Bench of this Court which admitted these appeals after reading the Circular dated 29-7-1986 produced later by the respondents, observed that the Court was extremely sorry to note that the Court was misled by the appellants to believe that the green belt existed and getting the appeals admitted, though it did not exist. Now on seeing the CDP approved by the Government as early as on 12-10-1984 and published on 18-10-1984, we are extremely sorry to note that the Court was misled to believe that green belt did not exist, which resulted in our dictating an order dismissing these appeals though the green belt did exist and the appellants did not even urge a ground relying on the CDP even at the time of arguing these appeals, which would have constituted a strong ground for allowing the appeals and by not doing so ensured their defeat to the detriment of public interest. Even after we dictated the order, the appellants did not inform us about the existence of green belt for Bangalore City Planning area under the CDP. But on our coming to know on 16-3-1987 of the existence of the CDP covering the area in question and the judgment of the learned Judge delivered in State of Karnataka Vs. Jayashree, as public interest would suffer irretrievably by our Judgment and it would be in plain contravention of the provisions of the Planning Act and the Judgment of the Supreme Court in P.K. Srinivasan -v.- State of Karnataka, CA Nos. 278(sic)6 and 2781 of 1982 dated 19th Jan 1982 in which the Supreme Court, confirming the Judgment of this Court held that the Regulations framed under the Planning Act were binding and had over-riding effect on all other laws and their contravention cannot be permitted by the authorities of Bangalore Corporation, we suo motu directed that these appeals be posted for "For being spoken to" for further hearing on 24-3-1987, that is, yesterday. We invited the attention of the Learned Counsel for the respondents as also the Government Advocate to the Judgment in State of Karnataka Vs. Jayashree, as also the circumstances under which the matter was being directed to be posted for "For being spoken to" and asked them to

examine the matter and make their submissions in the light of the CDP having come into existence for Bangalore Planning Area.

13. Accordingly, the matter was posted and we have heard the Learned Counsel. The relevant statutory Notifications pursuant to which the Bangalore Metropolitan Planning Area was demarcated and the CDP was published are :

(1) On 13th March 1984, a Notification under Sub-section (1) of Section 4A of the Planning Act was published. It reads :

"Notification No. HUD 496 TTP 83 Bangalore, dated 13th March 1984. In exercise of the powers conferred by Sub-section (1) of Section 4A of the Karnataka Town and Country Planning Act 1961 (Karnataka Act No. 11 of 1963) the Government of Karnataka hereby declares that w.e f. 15-3-1984 the area comprising peripheral villages around Bangalore as indicated in Schedule I to be a Local Planning Area for purposes of the said Act which shall be called by the name of "Planning Area for the environs of Bangalore and the limits of the said planning area shall be as indicated in Schedule-II."

According to the above notification, a planning area called "the environs of Bangalore was brought into existence. Schedule (1) to the said notification furnishes the list of as many as 324 villages in different Hobbles around the City of Bangalore which fall within the territorial jurisdiction of the Bangalore North, Magadi, Nelamangala and Hosakote Taluks. The boundaries of that planning area were set out in detail in schedule (2) and at the end there was the following note :

"Note : This excludes the Bangalore City Local Planning Area declared in Government Notification PLN 42 MNP 65(S.O. 3446) dated 1st November 1965."

In the list of the villages, we found Guni Agrahara (wrongly printed as Gini Agrahara) of Hesaraghatta Hobli in which the lands of the respondents are situate as one of the villages included in the Local Planning Area, environs of Bangalore.

(2) Thereafter, on 6th April 1984 there was another notification issued u/s 4A of the Planning Act. It reads :

"HOUSING AND URBAN DEVELOPMENT SECRETARIAT

Notification No. HUD 496 TTP 83(1) Bangalore, dated : 6th April 1984.

In exercise of the powers conferred by sub-section(3) of Section 4A of the Karnataka Town and Country Planning Act 1960 (Karnataka Act 11 of 1963) the Government of Karnataka hereby amalgamate the "Local Planning Area of Bangalore" declared in Notification No. PLM 42 MNP 65 dated 1st November, 1965 and the Local Planning Area declared for the environs of Bangalore in Notification of Even No. dated 13-3-1964 The amalgamated Local Planning Area shall be called by the name of Bangalore City Planning Area" w.e.f. 1st April 1984. The names of villages towns included in the amalgamated Local Planning

Area are as indicated in Schedule I and the limits of the said Planning Area shall be as indicated in Schedule II annexed in notification Nos. dated 1st November 1965 and 13th March 1984."

The effect of the above notification is, the Bangalore City Planning Area as declared earlier and the Planning Area of environs of Bangalore declared in the Notification dated 13th March 1984 were amalgamated to form the Bangalore City Planning Area. This notification has been issued under the powers vested in the Government under Sub-section (3) of Section 4A of the Planning Act which empowers the Government to amalgamate more than one planning area into one.

(3) After issuing the above declaration, a C.D.P. was approved by the Government on 12-10-1984 for the Bangalore City Planning Area as enlarged by Notification dated 6th April 1984. The said notification was published on 18-10-1984 in the Official Gazette. It reads :

"OFFICE OF THE COMMISSIONER, BANGALORE DEVELOPMENT AUTHORITY,
SANKEY ROAD, BLOCK XII. KUMARAPARK WEST EXTENSION, BANGALORE-560
020

Notification dated : 12th October 1984 Sub : Approval of C.D.P. for Bangalore Metropolitan Area.

No. BDA/TPM/648/84-85. Government in their Notification 1 No. HUD. 3 TTP 83 dated 12-10-1984 have approved u/s 22(3) of Karnataka Town and Country Planning Act, the CDP of Bangalore Metropolitan Area prepared by the Bangalore Development Authority. As required u/s 22(4) of the Act and Rule 44 of the Karnataka Planning Authority Rules, 1965, this notification is published for information of the public and institutions concerned.

The Plans, Regulations and the report of the C.D.P. is available for inspection by the public in the Planning Section of the Bangalore Development Authority, Bangalore. From the date of this notification, the provisions of the CDP shall have effect and shall govern all changes in the land use and development in the Bangalore Metropolitan Area. The provisions of the Outline Development Plan and regulations approved by Government in Order No. HMA 32 MNP 68 dated 22-5-1972 u/s 13 shall be deemed to be superseded, as provided

in Section 23 of the Act.

Sd/-- Commissioner."

14. In the order made in State of Karnataka Vs. Jayashree, at paragraph 10 of the Report it is said that the C.D.P. was approved and published in the order dated 20th August 1984. But it is a mistake. The C.D.P. was approved by the aforesaid Notification.

15. Under the C.D.P. the village, Guni Agrahara falls within the area earmarked as "green belt". A copy of the C.D.P. was made available to us by one of the Learned Counsel appearing in a connected case. The relevant Zoning Rule in the

CDP governing the Green Belt reads :

"1.2.6 Agricultural Zone (Green Belt) 1.2.6.1. Uses that are permitted : Horticulture, farm houses and their accessory building and uses not exceeding 200 Sq.m. of plinth area within the plot area limitation of minimum 1.2 hectares plot, uses specifically shown as stated in the land use plan like urban village, brick kilns and removal of clay upto 2.4 m depth beyond a distance of 1.5 k.m. from the development plan limits, gardens, orchards, nurseries, land under stable crops, grazing pastures and forest lands, marshy land, barren land, land under water.

1.2.6.2 Uses permissible under special circumstances : Parks and other public and semi-public recreational use not conducted for profit."

Relevant part of Section 14 which applies to the Outline Development plan prepared under the Act and Section 24 which applies Section 14 to the CDP read :

"14. ENFORCEMENT OF THE OUTLINE DEVELOPMENT PLAN AND THE REGULATIONS : (1) On and from the date on which a declaration of intention to prepare an outline is published under Sub-section (1) of Section 10, every land use, every change in land-use and every development in the area covered by the plan shall conform to the provisions of this Act, the Outline Development Plan and the regulations, as finally approved by the State Government under Sub-section (3) of Section 13.

(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.

"24. ENFORCEMENT OF THE COMPREHENSIVE DEVELOPMENT PLAN : (1) The provisions of Section 14, Section 15 and Section 16 shall apply mutatis mutandis to the enforcement of the Comprehensive Development plan."

Section 76M of the Act reads :

"76M. EFFECT OF OTHER LAWS : (1) Save as provided in the Act, the provisions of this Act and the rules regulations and bye-laws made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(2) Notwithstanding anything contained in any such other law.

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

b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out

by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

In view of these provisions, the respondents or any other person in a position like the respondents could apply for change of use of any land lying within the area of the CDP only to the Planning Authority, that is, the Bangalore Development Authority and not to the Deputy Commissioner. Even so, after more than one and half years after the CDP came into force the Government had issued directions to all the Deputy Commissioners including the Deputy Commissioner, Bangalore, not to reject the permission for conversion of agricultural lands for non-agricultural use assuming the existence of green belt. There is no mention to the CDP in the Government Circular dated 29-7-1986 which was sent to the Deputy Commissioner of Bangalore City and rural districts. It is difficult to comprehend as to why and how in the Circular dated 29-7-1986 issued long after the promulgation of the CDP and the Judgment of this Court in *State of Karnataka Vs. Jayashree*, decided in August 1985, reference to the existence of Green Belt for Bangalore City under the CDP was omitted and has not even been referred to in the three subsequent Circulars keeping the Circular dated 29-7-1986 in abeyance.

16. In view of the CDP and Sections 14 24 and 76M of the Planning Act, on and after 18-10-1984 the Deputy Commissioner, Bangalore, had no power or authority to deal with any application for change of use of land lying within the area of the CDP and that power vested with the Planning Authority. Therefore, the appeals have to be allowed and the order of the Appellate Tribunal has to be set aside, though on grounds not urged or raised by the appellants in these appeals, as it goes to the root of the matter, for, when transgression of law affecting public interest comes to the notice of this Court it is the duty of this Court to give effect to the law and not for its transgression, on the ground that the appellants did not choose to raise it.

17. The Learned Counsel for the respondent, however, submitted that the CDP in so far it relates to the additional area which is brought, within the Bangalore City Planning Area, was not in accordance with law on the ground that the prescribed procedure had not been followed. There is no dispute that Sub-section (3) of Section 4A empowers the Government to amalgamate more than one planning area into one planning area. This is what was done by Notification dated 6th April 1984. Sub-section (4) of Section 19 enables the preparation of a CDP for amalgamated planning area. Accordingly, a CDP has been prepared and approved for the amalgamated Bangalore City planning area. If, according to the respondents, there are grounds to challenge the validity of the CDP, they are at liberty to do so by filing a separate Writ Petition, but they cannot be permitted to raise such a contention in this proceedings, for, unless the validity is challenged by making the Planning Authority also a party and a prayer is made for striking down the CDP, the validity of CDP cannot be raised or considered.

18. Learned Counsel for the respondents, however, submitted an alternative

argument for sustaining the order of the Tribunal. He submitted that as the application was made on 29-8-1983 and as under Sub-section (5) of Section 95 of the Act, the Deputy Commissioner was required to pass orders on the said application within four months, the law which prevailed within those four months alone governs his application and the respondents had a vested right to secure permission for conversion. He also relied on Article 400A of the Constitution and submitted that the respondents had the right to enjoy their property as they pleased in accordance with law which was in force within a period of four months from the date on which the application was made. The right to acquire, hold and dispose of the property, which was originally a fundamental right under Clause (f) of Article 19 has been omitted by the Constitution 44th Amendment. The right incorporated under Article 400A thereafter is that "no person shall be deprived of his property save by authority of law". It is difficult to appreciate how the respondents can be said to have been deprived of their property by the provisions of the CDP. The CDP imposes restriction regarding the use of property and Section 14 of the Planning Act read with Section 24 provides that for every charge of use of land within the planning area, written permission of the Planning Authority is necessary and even if permission had been obtained under any other law, to act according to such permission would not be lawful. Therefore, on and after the date on which the CDP came into force, the Deputy Commissioner stood divested of his power u/s 95 of the Land Revenue Act to deal with the application of the respondents, though presented earlier.

19. Further, combined effect of Clauses(a) and (b) of Subsection (2) of Section 76M of the Act is, any change of land use with the permission of the Planning Authority alone is lawful. In other words, change of use of land lying within the planning area can be effected only with the permission obtained from the Planning Authority and acting on the permission rescued from the Deputy Commissioner would no longer be lawful and the Planning Authority is empowered to prevent any person acting on the basis of the permission granted by the Deputy Commissioner u/s 95 of the Land. Revenue Act. Therefore, there is no substance in the contention that the law which was in force earlier governs the application or that Article 400A of the Constitution is violated.

20. Before concluding, we consider it appropriate to observe that the gravity and magnitude of subversion of law disclosed in this case are such as would call for an immediate inquiry and in particular in respect of the following matters :

(i) Why in issuing the directions to the Deputy Commissioner, Bangalore regarding grant of permission for conversion of agricultural lands lying in the Green Belt area for non-agricultural use and in the Circular dated 29-7-1986 issued by the Government informing the Deputy Commissioners of all the districts including those of Bangalore Urban and Rural Districts, the existence of Green Belt for Bangalore City Planning Area under the CDP was ignored and who were all responsible for its issue when the CDP which specified the Green Belt for Bangalore City Planning Area had been approved by the Government itself on

12-10-1984 and was published in the Official Gazette on 18-10-1984 and the Government had itself relied on it before this Court in the case of State of Karnataka Vs. Jayashree, decided on 25-8-1985 and its plea had been upheld, and what action should be taken in the matter ?

ii) How many permissions have been granted in violation of the CDP and what action should be taken to annul such permissions given in contravention of the CDP ?

iii) Why a ground relying on the CDP was not taken in these cases before the Tribunal, before the Learned Judge and in these appeals ?

21. In the result, we recall the order dictated by us on 9-3-1987 dismissing these appeals and make the following order :

i) The writ appeals are allowed.

ii) In reversal of the order made by the Learned Single Judge in Writ Petition Nos. 7214 and 7215 of 1986, we allow the Writ Petitions and quash the order of the Karnataka Appellate Tribunal, impugned in the Writ Petitions.