

(1990) 12 KAR CK 0028
In the Karnataka High Court
Case No : W.A. No's. 1938 and 1939 of 1986

Special Deputy Commissioner

APPELLANT

Vs

Mrs. Bhargavi Madhavan

RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Land Revenue Act, 1964 — Section 95 (2), 95 (4)

Citation : (1991) ILR (Kar) 479 : (1991) 4 KarLJ 740

Hon'ble Judges : Venkatachala, J; Hanumanthappa, J

Bench : Division Bench

Advocate : B.V. Acharya, General and B.J. Somayaji, for the Appellant; R.B. Brahmavar, for the Respondent

Final Decision : Allowed

Judgement

Venkatachala, J.—Common Order dated 26-6-1986 made by a learned Single Judge of this Court dismissing Writ Petitions Nos. 7214 and 7215 of 1986 at the stage of their preliminary hearing is appealed against in these appeals of the Special Deputy Commissioner, Bangalore, and the State of Karnataka - the Writ Petitioners.

2. Whether the Common Order dated 16th September 1985 made in Appeals Nos. 241 and 242 of 1985 (Revenue) by the Karnataka Appellate Tribunal ("the Appellate Tribunal") impugned in the Writ Petitions, calls to be quashed in exercise of this Court's Writ jurisdiction under Articles 226 and 227 of the Constitution, is the short question requiring our consideration and decision in these Appeals.

3. However, as the said question needs our consideration in the back drop of the events which led the Appellate Tribunal to make the order impugned in the Writ Petitions and the events which have taken place subsequently, we shall refer to them.

14 acres 15 guntas and 15 acres 34 guntas are two extents of an agricultural land comprised in Survey No. 19 of Guni Agrahara village, Hesaraghatta Hobli, Bangalore North Taluk, Bangalore District, a village lying in the out-skirts of Bangalore City. Smt. Bhargavi Madhavan, respondent-1 here, is the occupant of the former land and Sri K.K. Muthukutty Vaidhyan, respondent-2 here, is the occupant of the latter land. Both of them wanted their respective lands to be diverted from their agricultural use to non-agricultural use, to wit, formation of residential building sites. Separate applications were made by them on 15-9-1983 to the Special Deputy. Commissioner, Bangalore District (appellant-1), for granting such diversion u/s 95 of the Karnataka Land Revenue Act, 1964 ("the Revenue Act"). By his Official Reminder dated 12-12-1983 (Annexure-A), appellant-1 rejected the application of respondent-1. So also, by his Official Reminder dated 12-12-1983 (Annexure-B), appellant-1 rejected the application of respondent-2. The reason given in the said Official Reminders for rejection of the applications of respondents 1 and 2 being common, read thus:

"Land in question is situated far away from gramathana and is devoid of Municipal facilities. In the circumstances grant of conversion causes public disturbance."

Both the Reminders being appealed against respectively in Appeal (Rev.) No. 48/1984 and Appeal (Rev.) No. 47/1984 before the Appellate Tribunal u/s 48(c) of the Revenue Act, grounds 4 to 7 urged in both the Memoranda of Appeal (Pages 39 to 50 of the Paper Book) by the respondents were:

"4. The respondent had not afforded an opportunity to the appellant to present his case nor was he made aware of the materials collected behind his back before rejecting the application. As such the impugned order is opposed to the principles of natural justice.

5. The respondent has erred in not appreciating the powers vested in him u/s 95(2) of the Karnataka Land Revenue Act and in particular the power to put the applicant on terms before granting permission. As the applicant had not been afforded any opportunity either to accept or reject any such conditions for safeguarding public interest the rejection is based on an erroneous exercise of powers.

6. The respondent has erred in rejecting the appellants application u/s 95(2) as the ground of diversion namely residence cannot conceivably a public nuisance, nor opposed to public interest in general, nor the occupant is unable to comply with the conditions that might be imposed u/s (4). As such the impugned order is not based upon any ground subserving the ground of nuisance contemplated under the law.

7. The respondent has erred in rejecting the application u/s 95(4) of the Karnataka Land Revenue Act as he has not proposed the imposition of any conditions to the appellant for acceptance. On the contrary the appellant had communicated his willingness to accept such conditions to be imposed under

subjection (4) of Karnataka Land Revenue Act, or the requirements of any law such as town planning, rural development, public health and civic amenities etc."

The Appellate Tribunal, by its separate Judgments dated 28th September 1984 (Pages 51 to 60 of the Paper Book) made in those appeals, allowed the appeals, set aside the Official Reminders and remitted the applications of the respondents to appellant-1 for fresh disposal in the light of the common observations made in those Judgments, which read:

"No doubt as per Section 95(3) of the said Act, permission to divert may be refused on the ground that the diversion is likely to cause public nuisance and in the instant case, refusal is on the valid ground of likelihood of causing public nuisance if conversion is permitted. Mere mention of a valid ground is not enough without giving sufficient justification for arriving at that conclusion. Further more, the learned Special Deputy Commissioner has not applied his mind as to whether such permission could be given imposing the conditions laid down u/s 95(4) of the impugned order is not a speaking order in the sense that it does not spell out what civic amenities are required and whether imposition of a condition to that effect would serve the purpose in as much as it is not at all examined whether suitable conditions could be imposed as provided u/s 95(a)."

The applications so remitted to appellant-1 having been clubbed by him, permission for diversion of the agricultural land to form residential building sites was refused by his common order dated 24th May 1985 (Pages 61 to 67 of the Paper Book). Reasons given by him for such refusal read thus:

"As could be seen from the village Map, Sy. No. 19 of Guni Agrahara village is situated far away from the village proper. The total extent of conversion asked for by the applicant is in all 14 acres 15 guntas and 15 acres 34 guntas in Sy. No. 19 of Guni Agrahara village. The conversion of this extent of land is requested with a view to have the residential buildings in the subject property. On careful verification of the location and the opinion furnished by the Town Planning Authority, I am of the view that the intended land use creates a public nuisance since such pockets of residential buildings leads to unplanned growth of Township, devoid of systematic and useful civic amenities. Therefore in the interest of planned growth of Bangalore City and in view of the fact that the subject property is situated in close proximity to the Bangalore City, the diversion of this large extent of agricultural land for residential use leads to unhealthy development and mushroom growth of residential pockets around Bangalore. This is certainly going to create a public nuisance apart from creating a liability on the local bodies and the Government for providing basic civic amenities. Therefore the request for conversion of an extent of 15 acres 34 guntas in Sy. No. 19 and 14 acres 15 guntas in the same survey No. of Guni Agrahara village cannot be considered. The argument of the learned Counsel for the applicant that it is a flat land and fit for residential use etc., holds no water in view of the total picture of the intending land use and its consequential effects in augmenting the problems of civic amenities. The learned Counsel contended that Section 95 of

the Karnataka Land Revenue Act 1964 has a regulatory provision rather than restricting the use of the agricultural land. On careful examination of the Section 95, I am of the view that Sub-section (3) of Section 95; clearly provides for restriction of the use of agricultural land for other purposes by diverting the same under this Section on the grounds that such a diversion is likely to cause public nuisance. Therefore, considering the overall picture of the growth of such residential pockets far away from the development layouts of Planning Authority, that too, adjacent to Bangalore City which has a well developed water supply and sanitation system, not only create public nuisance but also augment the problems of civic amenities and (not clear) the use of agricultural land in the vicinity. Therefore, the citations referred by the Counsel reported in Mysore Law Journal 1971 and Karnataka Law Journal 1974(1) and Mysore Law Journal 1972(1) have no relevance to the facts and circumstances of this case as an isolated residential pockets of this type developed by individual devoid of overall planning and control of civic amenity problem around Bangalore City. Hence, on considering all aspects of the case, I hereby reject the request for conversion of land bearing Sy. No. 19 of Guni Agrahara village measuring, an extent of 14 acres 15 guntas and 15 acres 34 guntas as the conversion of the land is refused, the land shall remain as agricultural land."

Appeals Nos. 241 and 242 of 1985 (Rev.) having been filed before the Appellate Tribunal by the respondents challenging the aforesaid Order of appellant-1, the operative portion of the Common Order (Annexure-C) made in them read:

"Both the appeals are allowed and the order of the Special Deputy Commissioner, Bangalore District, Bangalore, passed in ALN/ SR(N) 51 and 52/83-84 dated 24-5-1985 is set aside. The appellants are entitled to have their land diverted for non-agricultural use and the Special Deputy Commissioner, Bangalore District, Bangalore shall sanction the diversion of these lands for non-agricultural use subject of course to 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 building and shall also levy the conversion fine as is prescribed under rules."

The aforesaid order of the Appellate Tribunal is preceded by the only reasoning part of its Judgment, which reads:

"9. As far as the first point is concerned, a perusal of the detailed sketch filed by the appellants would go to show this Sy. No. 19 of Guni Agrahara village has roads on three sides. The Gramthana is also shown on the North Western side of this Sy. No. Existing houses on the free sites allotted to sites people are found on the Eastern side and Western side of this Sy. No. That being the case it is not possible to accept the reason of the learned Special Deputy Commissioner that the land in question is far away from the Gramthana and that these ground is

also irrelevant for refusal of permission for diversion of this land to non-agricultural use.

10. Now coming to the second reason that the extent sought to be converted are large in extent has also no relevance. This Tribunal has clearly laid down in Appeal No. 60/1984 (Rev.3) (LR) dated 21-3-1984 in the case of Sagar Subba Setty v. Special Deputy Commissioner, Chitradurga District, Chitradurga that there is no legal bar on conversion of large extent of land even-though the entire land may not be required for personal purposes. Therefore this also no ground to reject the applications for diversion of these lands. The third ground is that the Town Planning Authority has given an adverse opinion. The learned Special Deputy Commissioner has based his reasoning and is largely influenced by the opinion furnished by the Town Planning Authority. The Deputy Commissioner himself is empowered u/s 95(4) of the Act to impose conditions to see that any law relating to town and country planning for erection of building is not contravened. This is made clear in the case of Smt. J.H. Desai and others v. State of Karnataka reported in 1973 KAR LJ 52.

11. The other two grounds that diversion if granted would cause nuisance as pockets of residential localities without civic amenities will be created and that it would be liability to Government and civic bodies to provide amenities would also be created by imposing necessary conditions in that regard. In fact the learned Special Deputy Commissioner has not considered the aspect of imposing necessary conditions so as to secure the health, safety and convenience of the general public. In case the appellants were to use them as building sites, the Deputy Commissioner is well within his powers u/s 95(4) of the Act to order to secure that the dimensions, arrangements and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality and do not contravene the provisions of any law relating to Town and Country Planning or the erection of buildings. This Tribunal has held in a number of decisions that the valid grounds on which such applications could be rejected are listed out in Clause (3) of Section 95 of the Act and that the extent sought to be diverted is no criteria to refuse permission for diversion and that such applications should not be refused on untenable and irrelevant grounds. In our view, the reason assigned by the learned Special Deputy Commissioner could be complied with by imposing necessary conditions as stipulated under Clause (4) of Section 95 of the Act. Therefore, the impugned order is liable to be set aside and we proceed to pass this common order in respect of both the appeals."

This common Judgment of the Appellate Tribunal was impugned by the appellants by filing the aforesaid Writ Petitions. A learned single Judge of this Court, by his order dated 26-6-1989, dismissed the Writ Petitions at the stage of their very preliminary hearing on his view that the findings recorded by the Appellate Tribunal being findings of fact based on appreciation of evidence, did not call for interference in exercise of this Court's jurisdiction under Articles 226 and 227 of the Constitution. The Writ Petitioners - the Special Deputy

Commissioner, Bangalore District, Bangalore, and the State of Karnataka, who were aggrieved by the order of the learned Single Judge refusing to quash the order impugned in the Writ Petitions, presented these appeals.

4. These Appeals having been heard by a Division Bench of this Court, a Judgment had come to be dictated by it in the open Court dismissing the Appeals. However, it appears that that Division Bench re-called the dictated Judgment before it was transcribed and signed, and rendered a Judgment allowing the Appeals. That Judgment dated 9th March 1985/25th March 1987 Special Deputy Commissioner Vs. Bhargavi Madhavan, being appealed against before the Hon''ble Supreme Court, the same has come to be set aside by its Order dated 16th April 1988 and the two Appeals concerned are remitted to this Court for being disposed of by a Division Bench different from the one which decided the Appeals earlier.

5. When the Appeals were listed for hearing on 16-10-1980 before us, a Division Bench specially constituted for the purpose, we heard the learned Advocate General appearing for the common appellants in both the Appeals and also Sri R.B. Brahmavar, learned Counsel appearing for the respondents in the appeals, and reserved the Appeals for Judgment. As this Division Bench had been specially constituted to hear the Appeals, we had to sit a little beyond the Court hours to enable the learned Counsel appearing on both sides to complete their arguments in the Appeals. At the conclusion of the arguments, we gave also expression to our view that the order of the Appellate Tribunal impugned in the Writ Petitions will have to be quashed being ex-facie contrary to the provisions contained in Sub-sections (3) and (4) of Section 95 of the Revenue Act and the applications of the respondents for diversion of agricultural lands to non-agricultural use, are to be sent back to the Special Deputy Commissioner, Bangalore District, for fresh disposal according to the directions to be given to him in the Judgment to be rendered by us in the appeals and we decided to adopt such course in the matter of disposal of Appeals heard by us as it was regarded by us to be the just and proper course to adopt in the facts and circumstances of the case inasmuch as none of the learned Counsel suggested any better alternate course for our adoption.

6. However, on 18-10-1990, two Interlocutory Applications - I.As.VI and VII being filed in these Appeals by learned Counsel appearing for the respondents seeking our Orders on those Applications before we could proceed to render our Judgment in the Appeals, by means of a memo filed in that regard, those Applications were heard by us on 2-11-1990. As we found no good ground to allow those Applications, we reserved them for Orders to be made while rendering our Judgment in the Appeals.

7. The said Applications since could be disposed of at this stage itself, we shall proceed to do so.

The plea of the learned Counsel for the respondent in each of the Appeals, as

had been sought by him in the application - I.A.VI, was that we should call upon the learned Government Counsel appearing on behalf of the appellants - the Special Deputy Commissioner and the State, to urge the ground that there was no power in the Deputy Commissioner to grant diversion of agricultural lands to form residential sites, in that, the agricultural lands concerned were notified by the Government Notification dated 16-8-1988 as lying within the agricultural zone. According to learned Counsel, it was necessary for us to call upon the learned Government Counsel to urge such a ground as the same had been raised earlier in the Appeals by means of a separate application made in that regard inasmuch as urging of such ground would enable him (learned Counsel for the respondents) to point out its unsustainability. It was also the submission of the learned Counsel for the respondents that the learned Government Counsel could be compelled by us to urge such ground in support of his Appeals since the Supreme Court had, in its order of remand, pursuant to which we were hearing the Appeals, directed the Division Bench which had to hear these Appeals, to afford full opportunity to the parties to canvass their respective contentions. On the other hand, it was submitted by the learned Government Counsel that he could not be compelled to press a ground before the Court when he did not think it appropriate to press such ground, even though it had been taken up earlier to support the Appeals. However, when it was pointed out by us to the learned Counsel for the respondents that we would not be justified to compel the learned Government Counsel to press, or argue, a point which he does not choose to press or argue, the learned Counsel for the respondents was unable to say anything to the contrary. Hence, we reject I.A.VI.

Interlocutory application - I.A.VII had been made to seek impleadment of the Bangalore Development Authority as a party-respondent in the Appeals with a view to make the decision of this Court binding upon it (B.D.A) as regards the power of granting diversion of lands in Green Belt Area for formation of building sites. When I.A.VI filed for compelling the learned Government Counsel to urge the ground that lands concerned in the impugned order of the Appellate Tribunal being those in Green Belt Area, their diversion for non-agricultural use cannot be granted, has been rejected by us, there is no useful purpose to be served by granting impleadment of the B.D.A. as a party-respondent in these Appeals. Hence, I.A.VII is rejected.

8. As the learned Counsel for the respondents had, on 5-11-1990, filed a Memo in the Appeals, the same is reproduced:

"MEMO RE ARGUMENTS FILED ON BEHALF OF THE RESPONDENT

The Respondents submit as follows:

1. That the applications before the Special Deputy Commissioner were filed in the year 1983. Since then the second appellant-State has amended some Rules which are prejudicial to the Respondents.
2. Wherefore, if the matters were to go back to the Special Deputy

Commissioner, Bangalore, this Hon"ble Court may be pleased to direct that the law applicable to the applications should be the provisions of the Land Revenue Act and the Rules prevailing at the time the application was first considered by the Special Deputy Commissioner in the year 1983."

We may state here that we propose to express our view on the said Memo after we consider and decide upon the question, which has arisen for our consideration in these Appeals, to wit, whether the common order dated 16th September 1985 made in Appeals Nos. 241 and 242 of 1985 (Revenue) by the Karnataka Appellate Tribunal impugned in the Writ Petitions of the Writ Petitioners, calls to be quashed in exercise of this Court's Writ jurisdiction, in the back drop of the events, which we have adverted to hereinbefore and in the light of the contention urged in support of the Appeals by the learned Advocate General and the submissions of the learned Counsel for the respondents in each of the Appeals.

9. The Common Order of the Appellate Tribunal impugned in the Writ Petitions, It was contended by the learned Advocate General, being one made in contravention of Sub-sections (3) and (4) of Section 95 of the Revenue Act, had to be regarded as that made without jurisdiction and quashed by this Court in exercise of this Court's Writ jurisdiction.

10. As an objection was taken, rather seriously, by the learned Counsel for the respondents that we should not permit the learned Advocate General to urge the aforesaid contention, which he raised before us, we propose to consider the sustainability of that objection, at the out-set.

(i) The objection was that the contention raised by the learned Advocate General against the validity of the order of the Appellate Tribunal impugned in the Writ Petitions, not having been raised in the form, in which it has been raised now, in the Writ Petitions as well as in the Appeal Memo of the present Appeals, we should not allow him to raise such contention now and permit him to argue on such contention. The learned Counsel for the respondents sought to derive support for this objection from the decisions of the Supreme Court in *Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Others*, ; *Om Parkash and Others Vs. R.K. Lakra*, ; *Bharat Singh and Others Vs. State of Haryana and Others*, ; and *Jiyajeerao Cotton Mills Ltd. and Another Vs. Madhya Pradesh Electricity Board and Another*, .

(ii) In *Siddu Venkappa Devadiga Vs. Smt. Rangu S. Devadiga and Others*, the Supreme Court came across a situation where it had to have its say as to whether the High Court in deciding an Appeal before it, was justified in decreeing a suit which was dismissed by the trial Court, on its view that the defendant in the suit was in possession and running a restaurant as a benamidar for one Shivanna, through whom the plaintiffs had claimed for recovery of possession of the restaurant from Venkappa, when the plea of benami transaction had not been raised in the suit. In that context, the Supreme Court said that the High Court, in Appeal, went wrong in making out an entirely a new case of benami

transaction, which was not pleaded and was not the subject matter of the trial.

(iii) In *Om Parkash and Others Vs. R.K. Lakra*, the Supreme Court was dealing with an Appeal against the Judgment of a learned Single Judge of the High Court of Jammu and Kashmir, which had been rendered in a Second Appeal. One Attar Chand was a grantee of 4 marlas and 99 sq. ft. of land at Residency Road in Jammu from the Government of Kashmir. On the death of Attar Chand, his son - Guranditta Mal inherited the leasehold right in that land. Again, on the death of Guranditta Mal, under his Will, his widow-Indro Devi succeeded to the said leasehold right in that land. Since a sublease of that land had been granted to Raghunath, the father of the respondent in the Appeal before the Supreme Court, Indro Devi sought recovery of possession of that land on the ground of her bonafide requirement and also unlawful sub-lease granted in favour of Raghunath. Indro Devi succeeded in her suit before the trial Court. Appeal filed against that decree was also dismissed. In the Second Appeal before the High Court, the learned Single Judge deciding the Second Appeal took the view that the sub-lease of the land made by Guranditta Mal in favour of Raghunath was void and consequently, the suit of Indro Devi (appellants as L.Rs. on her death) must be dismissed. Allowing of the Appeal before the Supreme Court, was sought to be resisted by urging on behalf of the respondent there, that when Guranditta Mal sub-leased the land in favour of Raghunath without the permission of the Government, the title of the appellants in the said land had itself come to be extinguished and disentitled them to sue for recovery of its possession. The plea so raised on behalf of the respondents before the Supreme Court was not entertained on its view that either before the learned Sub-Judge or before the Additional District Judge or even in the Second Appeal before the High Court, the question of title of the appellants and their predecessors-in-title to the said land under lease granted by the Government had come to an end because of the sub-lease, had not been raised.

(iv) In *Bharat Singh and Others Vs. State of Haryana and Others*, the Supreme Court had to examine the validity of a Notification for acquisition of a land for a public purpose issued under the Land Acquisition Act. The land acquired under the Notification had ultimately come to the possession of Haryana State Industrial Development Corporation (for short "the HSIDC") for being developed as an industrial complex. When the appeal was pending in the Supreme Court, the HSIDC made an application for its impleadment as a party-respondent. On behalf of the appellants, a point as to the profiteering by the State on account of acquisition being raised at the hearing, the Supreme Court pointed out as to how such a point was not entertainable by them, by observing thus:

"....In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the Writ Petitioner, must plead and prove such facts by evidence which must appear from the Writ Petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the Writ

Petition or to the counter-affidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a Writ Petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a Writ Petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable."

(v) In *Jiyajeerao Cotton Mills Ltd. and Another Vs. Madhya Pradesh Electricity Board and Another*, the Supreme Court had to deal with a dispute raised in the Appeals regarding additional demand of electricity charges made by the Madhya Pradesh Electricity Board. A contention was raised that a penalty imposed in one order cannot be applied to the other without express language to that effect in either of the two orders. In the said context, it was observed by the Supreme Court thus:

"We do not think that in view of the fact that the point was not taken on behalf of the Company while instituting the Writ Petition in the High Court and filing the present appeals in this Court, it should be allowed to be urged at the hearing."

(vi) We are not able to see any good reason as to why the contention raised by the learned Advocate General against the validity of the order of the Appellate Tribunal should not be permitted to be raised nor the aforesaid Decisions could be regarded as those which warrant non-grant of permission to the learned Advocate General to raise the said contention.

11. The objection put forth by the learned Counsel for the respondents that the contention raised by the learned Advocate General as to the invalidity of the impugned order of the Appellate Tribunal should not be entertained by us, could have surely commended our acceptance, if our Decision on the contention required consideration of any fact falling outside the impugned order of the Appellate Tribunal, a statutory Tribunal. Contention raised by the learned Advocate General, we are not in doubt, could be of no consequence unless it is shown that the impugned order of the Appellate Tribunal is ex-facie contrary to the material provisions of Section 95 of the Revenue Act and has brought about an error in the Appellate Tribunal's exercise of jurisdiction invested in it under those provisions. Facts in each of the Supreme Court decisions, from which sustenance is sought in support of the said objection of the respondent's learned Counsel, are, as already pointed out, altogether different and distinguishable from the facts of the present Appeals. Hence, the Supreme Court decisions relied upon cannot be applied to hold that the contention raised by the learned Advocate General in the present Appeals is unentertainable. Moreover, it is difficult to regard the contention raised by the learned Advocate General as to the invalidity of the order of the Appellate Tribunal as a new plea raised at the hearing of the Appeals for the first time. In this context, it needs mention that the respondents themselves had questioned the validity of the original orders

(reminders) made by the Deputy Commissioner, as seen from grounds 4 to 8 of each of the Memorandum of Appeal filed before the Appellate Tribunal, to which we have already adverted, as being contrary to the material provisions of Section 95 of the Revenue Act. The order of the Appellate Tribunal made on those Appeals, which is adverted to by us earlier, makes it apparent that the orders of the Deputy Commissioner were set aside and the cases were remitted to the Deputy Commissioner for being decided rather in accordance with the provisions of Section 95 of the Revenue Act. Again, the common order of the Appellate Tribunal ultimately made in the Appeals of the respondents and impugned in the Writ Petitions, out of which the present Writ Appeals have arisen, as could be seen from its main portions excerpted earlier, makes it apparent that the Appellate Tribunal has not merely purported to make its order in consonance with the provisions of Section 95 of the Revenue Act, but has also directed the Deputy Commissioner to impose conditions on the respondents as required u/s 95(4) of the Act. Further, from a perusal of the Memorandum of Writ Petitions and the Memoranda of Common Appeals filed on behalf of the State and the Deputy Commissioner, it could be seen that every endeavour is made to point out that the order of the Deputy Commissioner while had been made in accordance with the provisions of Section 95 of the Revenue Act, the impugned order of the Appellate Tribunal had been made contrary to the provisions of Section 95 of the Revenue Act, as would require its review even though the grounds urged in the Memoranda of Writ Petition and Appeal, as such, do not say so in so many words. In any event, challenge to the orders made u/s 95 of the Revenue Act either by the Deputy Commissioner or the Tribunal, as has been pointed out by us, has to relate to such order not being made in consonance with Section 95 of the Revenue Act. Hence, the objection taken on behalf of the respondents that the contention raised by the learned Advocate General at the hearing of the Appeals is unentertainable, cannot be sustained and is rejected.

12. We shall now proceed to consider the contention raised by the learned Advocate General that the order of the Appellate Tribunal being contrary to Sub-sections (3) and (4) of Section 95 of the Revenue Act, has to be regarded as the one made by the Appellate Tribunal without jurisdiction.

The sustainability or otherwise of the said contention of the learned Advocate General since requires examination in the context of material portions of Section 95 of the Revenue Act, the same shall be excerpted:

"Section 95. Use of agricultural land and the procedure for use of agricultural land for other purpose -

(1)

(2) 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 apply for permission to the Deputy Commissioner, who may, subject to the provision of this Section and the Rules made under this Act, refuse permission or grant it on

such conditions as he may think fit.

Provided.....

(3) Permission to divert may be refused by the Deputy Commissioner on the ground that the diversion is likely to cause a public nuisance or that it is not in the interests of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under Sub-section (4).

(3A)

(3B)

(4) Conditions may be imposed on diversion in order to secure the health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality and do not contravene the provisions of any law relating to Town and Country Planning or the erection of buildings."

Sub-section (2) above, which entitles an occupant of land assessed or held for the purpose of agriculture, to apply to the Deputy Commissioner seeking grant of permission to divert such land or a part thereof for a purpose other than agriculture, invests in the Deputy Commissioner power to grant permission so sought or refuse the same. Exercise of power by the Deputy Commissioner in the matter of refusal of permission or grant of permission on conditions, is made subject to the provisions of the Section and the Rules made under the Revenue Act. Sub-section (3) above circumscribes the power of the Deputy Commissioner in the matter of refusal to grant diversion of land from agricultural use to non-agricultural use to cases -(i) where the diversion is likely to cause a public nuisance; or (ii) where the diversion is not in the interest of general public; or (iii) where the occupant is unable or unwilling to comply with the conditions that may be imposed under Sub-section (4) above. Conditions to be imposed on the occupant under Sub-section (4) above, as found therein, are -

(a) where the diversion sought for, if granted, is likely to adversely affect the health, safety and convenience of persons in the locality of the land, to secure such persons health, safety and convenience;

(b) where the diversion sought for, if is for formation of building sites, to ensure (i) that the dimensions, arrangement and accessibility of sites are adequate to secure the health and convenience of occupiers of sites; (ii) that the sites to be formed would be suitable to the locality;

(c) that the sites to be formed do not contravene the provisions relating to any law respecting Town and Country Planning or the erection of buildings.

What emerges from the analysis of the above provisions in Sub-sections (2), (3) and (4) may be put thus:

(i) If the occupant of a land assessed or used for agriculture wishes to divert its use for a purpose other than agriculture, such occupant could make an application to the Deputy Commissioner seeking grant of permission for such diversion;

(ii) Deputy Commissioner shall refuse to grant permission sought by the occupant for non-agricultural use of his/her agricultural land if such non-agricultural use is bound to result in public nuisance or to cause the interests of general public suffer. For instance, if the land's non-agricultural use is for establishing an industry which, by its effluents, fumes, gases, sounds, etc., is certain to bring about a change in the environment and prove hazardous to the health, safety and welfare of the people in the vicinity of the land, grant of permission for such non-agricultural use of agricultural land shall be refused. So also, due regard being given to the location of the agricultural land or nature of the agricultural land, if the proposed non-agricultural use is bound to make the public interest suffer, permission sought for such user shall be refused.

(iii) Where the non-agricultural use, to which diversion of the agricultural land is sought can be done by the occupant by satisfying the conditions relating to matters envisaged under Sub-section (4) as may be imposed, the Deputy Commissioner shall not refuse grant of permission for such non-agricultural use unless the occupant expresses his inability or unwillingness to comply with the conditions proposed to be imposed in that behalf. In other words, if the occupant expresses his readiness or willingness to comply with such conditions to be imposed, the Deputy Commissioner shall grant the permission for diversion of agricultural land to non-agricultural use sought for, imposing upon the occupant the conditions to be complied with.

13. Procedure required to be followed under Sub-sections (3) and (4) of Section 95 of the Revenue Act by the Deputy Commissioner in dealing with an application made by an occupant of an agricultural land seeking its diversion to non-agricultural use, to wit, formation of a lay-out of building sites with the object of selling or otherwise disposing of such sites to intending builders of residential houses or the like, calls to be spelt out clearly, as the applications to be made in that regard particularly from the occupants of agricultural lands around cities and towns are bound to increase day after day having regard to the uneatable demand for such building sites.

No doubt, grant of diversion of an agricultural land for formation of lay-out of building sites can be refused by the Deputy Commissioner under Sub-section (3) of Section 95 of the Revenue Act if such diversion is likely to cause public nuisance or is against interests of the general public. But, such instances of refusal would be rare because it would be difficult to find circumstances which would, in themselves, establish that grant of such diversion would either result in public nuisance or make the public interest suffer. At the same time, what is enjoined on the Deputy Commissioner by Sub-sections (3) and (4) of Section 95 of the Revenue Act cannot be overlooked since it becomes manifest therefrom

that the Deputy Commissioner shall refuse grant of diversion of agricultural land for formation of building sites unless the applicant is ready and expresses his willingness to comply with the conditions to be imposed upon him on the following matters:

- (a) That the dimensions, arrangement and accessibility of building sites to be formed on the agricultural land are adequate to secure the health, safety and convenience of occupiers of those sites;
- (b) That the building sites to be formed on the agricultural land will be suitable to the locality;
- (c) That the building, sites to be formed do not contravene the provisions relating to any law respecting town and country planning;
- (d) That the building sites to be formed do not contravene any law relating to erection of buildings.

Conditions on such matters being required to be imposed to sub-serve the public interest, imposition of such conditions has to be necessarily regarded as a mandatory requirement of law. From this, it follows that the Deputy Commissioner if grants diversion of agricultural land for formation of building sites without imposition of conditions on matters referred to in Sub-section (4) for compliance by the applicant, it would be a case of grant of diversion of agricultural land for formation of building sites without complying with the mandatory pre-requisite or pre-condition of law. Such grant consequently stands vitiated as one made illegally and without jurisdiction.

Then, if the Deputy Commissioner finds it possible to grant diversion of agricultural land for formation of building sites by imposing conditions on matters specified in Sub-section (4) requiring their compliance by the applicant (occupant), what procedure he should adopt to determine such conditions becomes a matter of importance, for such procedure, besides being just and reasonable, shall be in accordance with the Rules of natural justice.

Conditions to be imposed by the Deputy Commissioner respecting matters in Sub-section (4) requiring compliance by the applicant (occupant) being those which directly bear on what is intended to be done by the applicant (occupant) on the land concerned, the Deputy Commissioner is left with no option except getting from the applicant (occupant) "Building Sites Scheme" which is proposed for the land. Such "Building Sites Scheme" since has to satisfy the requirements of Sub-section (4) on matters adverted thereto, the applicant must, when called upon, furnish the information on -

- (a) location of the land and its surrounding areas to be reflected in a map of the area;
- (b) the manner in which the building sites are to be laid, roads are to be formed, drains are to be made on the land concerned to be reflected in a layout plan;

(c) drainage, sanitary, water supply and electric supply arrangements proposed to be carried out under the "Building Sites Scheme" to be reflected in plans or statement;

(d) civic amenities proposed respecting the layout to be reflected in the layout plan;

(e) whether the "Building Sites Scheme" conforms to the requirement of law, if any, relating to Country and Town Planning to be reflected in a statement; and

(f) whether the "Building Sites Scheme" conforms to the law, if any, relating to erection of buildings on the land concerned to be reflected in a statement.

Hence, when once an application is received by the Deputy Commissioner from an applicant (occupant) of an agricultural land for its diversion to building sites, he (the Deputy Commissioner) shall immediately call upon such applicant to make available to him "Building Sites Scheme" of the agricultural land along with information required therefore in triplicate (3 sets), one to be retained by him for holding the enquiry thereon and another for being sent to the Authority under the Country and Town Planning Act for its comments and yet another for being sent to the Building Licensing Authority concerned, a Mandal Panchayat or Town Panchayat, Town Municipal Council or City Municipal Corporation or Development Authority of the Area, as the case may be, for its comments. When the Deputy Commissioner receives from the applicant "Building Sites Scheme" of the agricultural land along with the information required therefore, in triplicate, he shall send one set to the Authority under the Town and Country Planning Act and another to the local authority empowered under the Act concerned, calling upon them to send their comments on whether the "Building Sites Scheme" conforms to the provisions of the Country and Town Planning Act of Regulations relating to erection of buildings of the Local Authority Act, as the case may be, within a reasonable time to be fixed therefore. He shall thereupon hold a summary enquiry on the application made for diversion of agricultural land to building sites and make a local inspection of the land affording reasonable opportunity to parties to make good their claims. After such enquiry and local inspection are completed, if the Deputy Commissioner forms his opinion on matters respecting which conditions are to be imposed for compliance by the applicant in carrying out his "Building Sites Scheme" on the land, the applicant must be called upon to express his readiness and willingness to comply with the conditions to be so imposed. If the applicant (occupant) expresses his willingness to comply with such conditions, the Deputy Commissioner shall grant diversion of agricultural land as sought by the applicant imposing the conditions agreed to be complied with, by the applicant. Whether Deputy Commissioner grants or refuses diversion of the agricultural land for building sites by an order to be made in that regard, such order must be a speaking order, his conclusions therein being supported by reasons, inasmuch as his order is appealable before the Appellate Tribunal.

14. What remains to be examined now is whether the order of the Appellate

Tribunal impugned in the Writ Petitions had been made in contravention of the requirements of Sub-sections (3) and (4) of Section 95 of the Revenue Act in the matter of grant of diversion of agricultural land to non-agricultural use, and called to be interfered with, when by filing the Writ Petitions, this Court's Writ jurisdiction under Articles 226 and 227 of the Constitution was invoked in that behalf and was the learned Single Judge justified in refusing to interfere with that order, by making an order now questioned in the present appeals.

15. The contention raised by the learned Advocate General against the validity of the order of the Appellate Tribunal impugned in the Writ Petitions is that that order, as becomes apparent on its face, being one made contrary to the provisions in Sub-sections (3) and (4) of Section 95 of the Revenue Act and hence without jurisdiction, called to be Interfered with in exercise of this Court's Writ jurisdiction. Sri Bramhavar, learned Counsel for the respondents in these Appeals (applicants before the Deputy Commissioner), though did not dispute the position that it was open to the Deputy Commissioner under Sub-section (3) of Section 95 of the Revenue Act to refuse grant of permission for diversion of agricultural lands for their use as building sites, if the applicants (occupants) of such lands were not willing to comply with the conditions which may be imposed upon them respecting matters specified in Sub-section (4) thereof, it was his submission- that it cannot be said that the Appellate Tribunal had acted in contravention of Sub-section (3) when it has ordered -

"That the appellants were entitled to have their lands diverted for non-agricultural use and that the Special Deputy Commissioner, Bangalore District, Bangalore, shall sanction diversion of those lands for non-agricultural use subject of course to imposing such conditions as are permissible within Sub-section (4) of Section 95 of the Revenue Act."

While there is merit in the contention of the learned Advocate General, such merit is lacking in the submission made on behalf of the respondents-applicants, for the reasons which we shall presently state.

16. Deputy Commissioner making orders as original authority or the Appellate Tribunal exercising appellate powers over the orders of Deputy Commissioners, when deciding upon an application made under Sub-section (2) of Section 95 of the Revenue Act for diversion of an agricultural land to a non-agricultural use, i.e., formation of building sites, has to observe the mandatory requirements envisaged in that regard by Sub-sections (2) and (3) thereof, which are intended to sub-serve public interest. As has been pointed out by us in dealing with the content and mandate of Sub-sections (3) and (4), it is open to the Deputy Commissioner to refuse grant of diversion of an agricultural land for formation of building sites if the applicant concerned expresses his uneasiness and unwillingness to comply with the conditions to be imposed on him on matters specified in Sub-section (4). What the Appellate Tribunal has now done by its order impugned in the Writ Petitions, is to make grant of diversion of land, a fact accompli, leaving it open to the Deputy Commissioner to impose conditions on

matters covered by Sub-section (4) on the applicants, if he so chooses. It is rather beyond our comprehension how the Deputy Commissioner could have been compelled by the Appellate Tribunal to grant diversion of an agricultural land for formation of building sites when he was mandated under Sub-section (3) to refuse grant of such diversion unless the applicant (occupant) expressed his readiness or willingness to comply with all the conditions to be imposed on matters covered by Sub-section (4). When the excerpted operative portion of the order of the Appellate Tribunal and the excerpted portion of the reasons that led the Appellate Tribunal to make the order are seen, it becomes manifest that the Appellate Tribunal has overlooked the mandatory requirements in Sub-sections (3) and (4) of Section 95, which were required to be observed as a pre-requisite or a pre-condition in dealing with the application made under Sub-section (2) thereof, having regard to the public interest intended to be served by them. All that the Appellate Tribunal has done is to set aside the order of the Deputy Commissioner refusing to grant permission for diversion of agricultural lands for building sites finding that the reasons given therefore were not sound. Though it was open to the Appellate Tribunal, as an Appellate Authority respecting the order of the Deputy Commissioner, to observe the mandatory requirements of Sub-sections (3) and (4) and grant diversion, it has not done so. On the other hand, without reference to the mandatory requirements of Sub-sections (3) and (4), it has granted the diversion of agricultural lands to non-agricultural use sought for. The Appellate Tribunal has not even applied its mind to the facts of the cases before it for finding whether the applicants were entitled to grant of diversion sought for by them. Imposition of conditions by the Deputy Commissioner on matters specified in Sub-section (4) and the applicant expressing his readiness and willingness to comply with such conditions, is, in effect, a matter of agreement to be reached between them before deciding whether the applications for grant of diversion of agricultural lands to non-agricultural use could be granted or not, is completely overlooked by the Appellate Tribunal. The Appellate Tribunal's order impugned in the Writ Petitions, since requires the Deputy Commissioner that he shall grant diversion of the agricultural lands of the applicants (respondents) to non-agricultural use, i.e., formation of building sites, without finding whether the sites to be formed on the agricultural lands could be done without reference to the conditions to be imposed on matters in Sub-section (4) and without the applicants expressing their readiness and willingness to comply with the conditions to be imposed in that regard, the pre-requisites of law to be satisfied for granting diversion of agricultural lands to non-agricultural use, it has to be regarded as one made by the Appellate Tribunal contrary to Sub-sections (3) and (4) of Section 95 of the Revenue Act and without jurisdiction. Hence, the common order of the Appellate Tribunal impugned in the Writ Petitions, which stands vitiated from error of jurisdiction apparent on its face, calls to be interfered with and set aside. The learned Single Judge, by the order under appeals, has dismissed the Writ Petitions proceeding on the assumption that it contained findings of fact, while there were none, as pointed out by us earlier, and hence the Order under

Appeals calls to be set aside. In so far as the orders of the Deputy Commissioner are concerned, we feel that the Appellate Tribunal was justified in setting them, aside in that, they had also been made without conforming to the requirements of Sub-sections (3) and (4) of Section 95 of the Revenue act.

17. We may here deal with the Memo filed in these Appeals by the learned Counsel for the respondents.

By the Memo, the learned Counsel for the respondents has prayed that in the event of our setting aside the order of the Appellate Authority and remitting the applications of the respondents-applicants to the Deputy Commissioner for fresh disposal according to law, we must direct the Deputy Commissioner to decide those Applications according to law as existed on the date of the Applications and not as it may exist on the date on which the Deputy Commissioner has to make a decision on those Applications. We find it difficult to accede to the prayer made in the Memo.

As to what is the law applicable for disposal of the Applications, which may have to be adjudicated upon by the Deputy Commissioner, has to necessarily depend upon the law concerned, i.e., on its prospective operation or retrospective operation. Such being the position, the prayer in the Memo cannot be granted. Hence, the prayer in the Memo is rejected.

18. In the result, we allow these Appeals, set aside the Order of the learned Single Judge, allow the Writ Petitions and quash the order of the Appellate Tribunal impugned therein. The orders of the Deputy Commissioner questioned in the Appeals before the Appellate Tribunal shall not stand revived by our quashing the order of the Appellate Tribunal. Consequently, we remit the cases to the Special Deputy Commissioner, Bangalore Urban District, Bangalore, for deciding the Applications made by the respondents for diversion of their agricultural lands for formation of building sites in the light of this Judgment and in accordance with law. The Special Deputy Commissioner shall, within two weeks from the date of receipt of this Judgment, call upon the respondents (applicants) to produce before him the "Building Sites Scheme" to which we have adverted in the course of this Judgment and also call upon the Country and Town Planning Authority and the Local Authority in the area of the lands to file their comments to the "Building Sites Scheme", if any, hold an enquiry into the matter, make a local inspection of the lands concerned, after affording opportunity to persons concerned to participate in such enquiry and local inspection, and decide upon the applications expeditiously, and at any rate within a period of four months from today.

19. We make no order as to costs in these Appeals as the Special Deputy Commissioner, the Appellate Tribunal and the respondents had gone on with the matter, without clear understanding of the mandate of Sub-sections (2) and (3) of Section 95 of the Revenue Act.