

(1998) 08 KAR CK 0085

In the Karnataka High Court

Case No : Writ Appeal No"s. 1746 to 1757 of 1997 connected with Writ Appeal No"s. 3075 to 3078 of 1997

State of Karnataka and others

APPELLANT

Vs

M/s. Village-De-Nandi (Private) Limited and Others

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Reforms Act, 1961 — Section 63, 64, 66
Karnataka Land Revenue Act, 1964 — Section 95

Citation : (1999) ILR (Kar) 49 : (2000) 3 KarLJ 8

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Sri S. Vijaya Shankar, A.G. and Smt. V. Vidya, High Court Government Pleader, for the Appellant; Sri Shanti Bhushan for Sri S.M. Chandrashekar and Sri Basavaraj, for the Respondent

Judgement

G.C. Bharuka, J.—These writ appeals are directed against the order dated 11-12-1996 passed by the learned Single Judge allowing the Writ Petition Nos. 29597 to 29608 of 1996. The writ petitions had been filed by three private limited companies namely; (i) Mis. Village-De-Nandi (Private) Limited, (ii) M/s. Foot Hills Resorts (Private) Limited and (iii) Mis. Pennar Hotel and Resorts (Private) Limited (in short, the "Companies" hereinafter). For the sake of convenience, we will be referring to the documents as marked and the parties as arrayed in the writ petitions.

2. The companies had filed the above writ petitions questioning the validity of the orders dated 2-2-1996/12-2-1996/13-2-1996 (Annexure-L1 to L12) passed by the respondent Tahsildar and the order dated 4-10-1996 (Annexure-P) passed by the respondent-Assistant Commissioner, being the Appellate Authority. The Tahsildar, by his impugned orders had held that the earlier orders passed u/s 95 of the Karnataka Land Revenue Act, 1964 (in short, the "Act") permitting use of the agricultural lands in question for residential/small scale industry/commercial

purposes stood cancelled because of non-use of the said lands for the aforesaid purposes within the prescribed period of two years. These orders were affirmed in appeal by the Assistant Commissioner. At the time of filing of the writ petitions, an application filed by another company, namely M/s. Nandi Hills Hotels and Resorts Limited, which was not a party to the writ proceedings, was pending consideration before the Bangalore Metropolitan Region Development Authority, respondent 2 (in short, the "BMRDA") for approval of a proposed Golf Club Project which was to be developed over the lands in question under some lease agreement with the Companies.

3. Under the aforesaid facts and circumstances, the Companies filed the above referred writ petitions with the following prayers.-

"(a) Issue a writ of certiorari quashing the impugned orders of the 4th respondent-the Tahsildar, bearing No. ALNCR: 43/95-96, dated 2-2-1996, No. ALNCR/58 to 67, dated 12-2-1996 and No. ALNCR:68/95-96, dated 13-2-1996, are at Annexures-L1 to L12.

(b) The orders of the 3rd respondent-the Assistant Commissioner bearing Nos. ALN/CR/D-3, D-4 and D-5, dated 4-10-1996 at Annexure-P.

(c) Issue a writ in the nature of mandamus directing the second respondent to accord sanction to the petitioners' project and

(d) xxx xxx xxx".

4. The learned Single Judge, on having found that the Tahsildar had passed the orders at Annexure-L1 to L12 without affording any opportunities of hearing to the companies, by his impugned order dated 11-10-1996, allowed the writ petitions by granting the above prayers in the following terms.-

"(i) the impugned orders dated 12-2-1996 and 13-2-1996 passed by the Tahsildar and the order dated 4-12-1996 passed by the Assistant Commissioner are quashed.

(ii) The 2nd respondent is directed to accord sanction to the petitioners' Project".

5. During the course of arguments of the present appeals, Mrs. Vidya, learned High Court Government Pleader appearing for the State Government and its officers, brought to our notice that some proceedings initiated under the Karnataka Land Reforms Act, 1961 (in short, the "KLR Act") are pending adjudication before the appropriate authorities which will have a material bearing on the very claim of ownership of the Companies in relation to the present lands and therefore the said aspects should also be taken into account. On 6-1-1998, an application was filed by the learned High Court Government Pleader taking additional grounds. Ground 3 of the said application reads as under.-

"As the extent of agricultural land owned by the present respondents is in excess of the ceiling limit under the provisions of the Karnataka Land Reforms Act, compliance with the requirements of Section 66 of the Karnataka Land Reforms

Act is mandatory. As the requirement has not been fulfilled statutory consequences follow, which are prohibition of alienation of holding, forfeiture of the lands in question followed by vesting of the same in the State Government. The learned Single Judge ought to have, therefore, held that as the holder of the lands has not followed the mandatory requirements of Section 66, the transactions that followed namely the alleged sale of the land and their conversion are illegal and void ab initio".

6. An objection was taken on behalf of the Companies to the entertainment of aforesaid ground on the plea that the same was not raised before the learned Single Judge. In our opinion, the objection is not tenable because as we will shortly refer hereinafter, the Companies had full knowledge of the pendency of various proceedings under the KLR Act in relation of the land in question and admittedly, those proceedings have material bearing on the right of the Companies to claim ownership or to continue with any development scheme over the said land. But the said material facts were suppressed in the writ petitions. No doubt, the officers of the State who had been entrusted with the statutory duties and powers to ensure compliance in accordance with the statutory mandates had also miserably failed in discharging of their duties and had taken callous attitude in appropriately prosecuting the public interest by placing the said records before the learned Single Judge. But, in our opinion, for their laches, public interest cannot be made to suffer. This Court exercising powers under Article 226 cannot be accepted to remain a mere silent spectator to all the fraudulent, deceitful, callous and mala fide acts of the State's authorities functioning to the detriment of the public interest and contemptuous violation of legislative mandates thereby allowing itself to be dictated by procedural technicalities enuring to the benefit of the persons accused of violating the well professed provisions of the KLR Act meant for benefiting the deprived section of the society. Keeping in view all these considerations, by order dated 3-3-1998, we directed the learned Government Pleader to place on record through personal affidavits of the Tahsildar, the Assistant Commissioner as also the Revenue Secretary all the material facts regarding pending proceedings pertaining to the land in question initiated under the KLR Act and also to produce the original records and the relevant files. Compliance of the said order, reveals something astounding and prima facie reflects a deep-rooted conspiracy between the revenue authorities and purported beneficiaries. It cannot be lost sight of that the wives of two senior IAS Officers of the State are holding major shares in the Companies and we are told at the Bar that investigations by the Lokayukta are pending with regard to their material acquisitions.

7. We would like to first notice those facts which will form the bedrock for the appropriate adjudication of the disputes raised here in these appeals. As per the revenue records maintained under the provisions of the Act and produced before us, and the particulars whereof have been placed on record by the State along with the memo dated 19-3-1998, as on 1-3-1974, i.e., the date for application of Chapter IV of the KLR Act, providing for ceiling on land holding and incidental

matters, the major extents of lands in question were owned and possessed by Sri Lekhu and Sri Khusi the two sons of one Gopaldas Jagtiani.

8. The two brothers, Lekhu and Khusi, had jointly purchased lands measuring 80 acres and 61 acres 18 guntas of former Jodi Village of Kottige Thimmanahalli, Kundana Hobli, Devanahalli Taluk, Bangalore District under two registered sale deeds, both dated 2-8-1966 from the legal heirs of one late Mr. P.S. D'Souza. The details of Survey Number, Total Extent, Kharab and Cultivable Land are as under:-

Survey Number

Total Extent A - G

Total Kharab (A) + (B) A - G A - G

Cultivable Land Acre Guntas

X

Y

(X-Y)

1

5-25

0-01 + 0-03

5-21

2

1-02

0-00 + 0-05

0-37

3

1-24

0-00 + 0-00

1-24

4

0-38

0-00 + 0-00

0-38

5

1-37

0-00 + 0-04

1-33

6

1-26

0-00 + 0-03

1-23

7

0-38

0-00 + 0-03

0-35

15

4-03

0-00 + 0-07

3-36

16

6-19

0-00 + 0-04

6-15

17

9-08

0-00 + 0-00

9-08

18

6-00

0-00 + 0-00

6-00

19

5-18

0-00 + 0-00

5-18

20

5-33

0-00 + 0-00

5-33

21

4-28

0-00 + 0-00

4-28

22

6-03

0-00 + 0-00

6-03

23

7-34

0-00 + 0-00

7-34

24

7-25

0-00 + 0-00

7-25

25

7-00

0-00 + 0-00

7-00

26

2-27

0-00 + 0-00

2-27

27

2-31

0-00 + 0-00

2-31

28

2-18

0-00 + 0-00

2-18

29

8-24

0-00 + 0-00

8-24

30

9-07

0-00 + 0-00

9-07

31

6-02

0-00 + 0-16

5-26

32

7-10

0-00 + 0-00

7-10

33

13-14

2-10 + 0-00

11-04

34

5-23

0-00 + 0-00

5-23

The revenue records further show that land measuring 3 acres 33 guntas in Sy. No. 7 of Karehalli Amanikere Village, Kundana Hobli, Devanahalli Taluk, Bangalore District was owned and possessed jointly by Sri Lekhu and Sri Khushi as on 1-3-1974.

9. Similarly, Ms. Leela Jagtiani, purchased land to the extent of 22 acres 38 guntas of different survey numbers to be indicated hereinbelow situate in Kottige Thimmanahalli Village, Kundana Hobli, Devanahalli Taluk, Bangalore District from one M/s. Mysore Food Processing and Canning Company Private Limited, No. 30, Wellington Street, Richmond Town, Bangalore, under a registered sale deed dated 4-9-1980. The details of Survey Number, Total Extent, Kharab and Cultivable Land are as under:-

Survey Number

Total Extent A - G

Total Kharab (A) + (B) A - G A - G

Cultivable Land Acre Guntas

X

Y

(X-Y)

9

5-03

0-00 + 0-07

4-36

10

5-03

0-00 + 0-00

5-03

11

6-32

0-08 + 0-06

6-18

12

5-11

0-12 + 0-00

4-39

13

1-15

0-00 + 0-09

1-06

10. Insofar as the land holdings by Ms. Leela Jagtiani in Sonnenahalli Village, Kundana Hobli, Devanahalli Taluk, Bangalore District are concerned, the same seems to have been purchased by her under different sale deeds from different vendors. The details of Survey Number, Total Extent, Kharab and Cultivable Land are as under:-

Survey Number

Total Extent A - G

Total Kharab (A) + (B) A - G A - G

Cultivable Land Acre Guntas

X

Y

(X-Y)

4/2

0-31

0-00 + 0-04

0-27

8

4-00

0-00 + 0-03

3-37

13

3-07

0-00 + 0-07

3-00

14

1-01

0-01 + 0-00

1-00

15

1-03

0-00 + 0-00

1-03

16

0-29

0-00 + 0-01

0-28

24

4-16

0-00 + 0-00

4-16

25

4-05

0-00 + 0-00

4-05

26

5-37

0-00 + 0-04

5-33

11. Insofar as the land holdings held by Ms. Leela Jagtiani in Karehalli Amanikere Village, Kundana Hobli, Devanahalli Taluk, Bangalore District are concerned, Sy. No. 4 was purchased by her from Balan Nambiar under the sale deed dated 24-2-1981 and the only other Sy. No.

7 was gifted to her by Lekhu Gopala Das Jagtiani under registered gift deed dated 10-7-1980. The details of Survey Number, Total Extent, Kharab and Cultivable Land are as under:-

Survey Number

Total Extent A - G

Total karab (A) + (B) A-G A-G

Cultivable Land Acre Guntas

X

Y

(X-Y)

4

1-12

0-00 + 0-00

1-12

7

3-33

0-00 + 0-07

3-26

It may be of importance to note that as on 1-3-1974, i.e., the cut off date for determining the lands in excess of ceiling area u/s 63 of the KLR Act, the above Sy. No. 7 measuring 3 acres 33 guntas may be required to be taken as the holding of Sri Lekhu and Sri Khusi, in view of Section 63(10) as explained by the Supreme Court in the case of Sharanappa Basappa Dindawar Vs. State of Karnataka and Others, .

12. As it appears from the Government records, both the Jagtiani brothers claimed exemption from provisions of the KLR Act in respect of the above lands held by them in terms of Section 107(I)(v) of the said Act on the ground that they were using the said lands for stud farm known as "Juggi Stud Farm".

13. In connection with the above claim of exemption, the Special Tahsildar (Land reforms), Devanahalli, in his letter No. LRF.CR.78/78-79, dated 13-11-1978 addressed to the Assistant Commissioner, Doddaballapur, reported that Jaggy Stud Farm was using 142 acres 07 guntas of land. The details of the said land tallied exactly with the lands jointly held by the Jagtiani brothers as on 1-4-1974 as noticed above. This letter was forwarded by the Assistant Commissioner to the Government and forms part of the records produced before us.

14. Since out of the said land claimed to be under use for stud farm, the land bearing Sy. No. 7 of Karehalli Amanikere Village was gifted to Ms. Leela Jagtiani by a registered gift deed dated 10-7-1980, therefore, land measuring 138 acres 18 guntas only of Kottigethimmanahalli Village remained for the use of the stud farm as is evident from the letter dated 16-1-1986 written by the Special Deputy

Commissioner, Bangalore, to the Secretary to the Government, Revenue Department. Whether keeping in view the provisions of Section 74 read with Section 83 of the KLR Act, the said gift is valid or not is a matter to be decided by the statutory authorities under the KLR Act.

15. It further appears that on 8-5-1992, Mrs. Isle Jagtiani, wife of Mr. Lekhu, entered into an agreement of sale with M/s. Foot Hills Resorts, a partnership firm, for sale of 50% of her undivided right and interest in part of the properties acquired by her husband jointly with his brother Mr. Keshu. The lands in respect of which the undivided interest was intended to be sold were Sy. Nos. 1, 2, 3, 4, 5, 6, 7, 20, 29, 30, 31, 32, 33 and 34 of former Jodi Village ot Kottige Inimmananalli, Kundana Homi, Devanahalli Taluk, measuring 66 acres 18 guntas. These lands were described in Schedule "A" to the agreement. Schedule "B" to the agreement merely refers to 50% of the undivided right and interest in Schedule "A" property intended to be sold. In the agreement of sale, there was a specific stipulation for seeking permission to convert the lands for the purpose of Hotel Resorts, Health Club, Tourist Promotional Activities etc. The relevant part of the agreement of sale dated 8-5-1992 reads as under:-

"The purchaser has made it known to the vendor that it intends to purchase Schedule "B" property for converting it into Hotel Resorts, Health Club, Tourist Promotional Activities and other purposes, at the cost and expenditure of the purchaser and the vendor hereby consents thereto. The purchaser shall be entitled to convert Schedule "B" property, for Hotel, Health Club and other Tourist Promotional Activities, at the costs, risk and expenditure of the purchaser. The vendor shall not be liable or responsible for the consequences or result, of any application made by the purchaser. All expenses connected with such conversion, shall be borne by the purchaser. It is further agreed between the parties hereto that since Schedule "B" property carved out of Schedule "A" property is being delivered to the purchaser in its agricultural / farm land state and since all efforts and expenses for conversion are being made and incurred by the purchaser herein, the benefit of conversion, shall therefore accrue to the purchaser, on the sale being completed".

16. The narrations in the above agreement of sale disclose that Sri Lekhu expired on 26-1-1990 leaving behind him his last Will and testament dated 5-11-1989 wherein he had bequeathed all his properties including his 50% undivided right, title and interest in the lands in question to his wife Mrs. Isle in respect of which probate was obtained from the Bombay High Court under order dated 26-11-1991 passed in Petition No. 635 of 1990.

17. Subsequently, as agreed to between the parties under the aforesaid agreement of sale, applications were filed by both Mrs. Isle Jagtiani and Ms. Leela Jagtiani u/s 95 of the Act before the Deputy Commissioner seeking permission to divert the lands for other purposes like residential/commercial/ small scale industry which was granted by the competent revenue authorities under various orders to be indicated hereinbelow:

Sl. No.

Date of Order

Annexure

Order passed by

Order in favour of

Sy. No.

Village

Purpose

1.

15-03-90

B-1

Tahsildar

Ms. Leela

9

Kottige Thimmanahalli

R

2.

18-10-90

B-2

Tahsildar

Ms. Leela

10

"

R

16

STATE v. M/s. VILLAGE-DE-NANDI (P) LIMITED (DB)

12000(3)

Sl. No.

Date of Order

Annexure

Order passed by
Order infavour of
Sy. No.

Village

Purpose

3.

17-12-90

B-3

Tahsildar

Ms. Leela

11, 12, 13

Kottige Thimmanahalli

R

4.

[23-12-68]

C-1

Asst. Commnr.

Mr. Kushi

15

I

5.

24-07-92

C-2

Asst. Commnr.

Mrs. Isle

1 to 7

C

6.

22-07-92

C-3

Asst. Commnr.

Mrs. Isle

15 to 32

C

7.

12-08-92

C-4

Asst. Commnr.

Mrs. Isle

23 to 34

C

8.

28-08-92

C-7

Asst. Commnr.

Ms. Leela

8, 13 to 16, 24 to 26 & 4/2

Sonnenahalli

C

9.

28-08-92

C-8

Asst. Commnr.

Ms. Leela

4&7

K. Amanikene

C

R = RESIDENTIAL

C = COMMERCIAL

I = INDUSTRIAL

18. Admittedly, the order of conversion at Annexure-B1, B2 and B3 passed by the respondent Tahsildar, were subject to certain conditions. The material conditions having bearing on the deemed cancellation of the order permitting diversion for non-agricultural purposes were to the following effect.-

"(1) This converted land should be used for bona fide purpose i.e. residential purpose only- it should not be alienated without prior permission and without change in the purpose.

..... (8) If this converted land is not used within two years from today for bona fide use, the land conversion shall be deemed to have been revoked.

(9) This land conversion order is subjected to the conditions of the undertaking executed by the applicant on 18-10-1990, agreeing with the terms imposed in it. If the said conditions are violated, this order will not be valid. The proceedings will be initiated against the violation of conditions as per Section 96 of the Karnataka Land Revenue Act, 1964 and it will be considered as punishable offence and action will be taken in this regard and the expenses to be incurred or charged towards this, will be recovered from the title holder/khathedar as arrears of land revenue".

19. Similarly, the conversion order at Annexures-C1, C2, C3, C4, C7, and C8 passed by the respondent-Assistant Commissioner, were more or less, subjected to similar conditions as stipulated by the respondent Tahsildar. The material conditions having bearing on the deemed cancellation/revocation of the conversion order are to the following effect.-

"(1) This converted land should be used for bonafide purpose i.e. commercial purpose only.

..... (7) If this converted land is not used within two years from today for bona fide use, the land conversion shall be deemed to have been revoked.

(8) This land conversion order is subjected to the conditions of the undertaking executed by the applicant on 20-7-1992, agreeing with the terms imposed in it. If the said conditions are violated, this order will not be invalid. The proceedings will be initiated against the violation of conditions as per Section 96 of the Karnataka Land Revenue Act, 1964 and it will be considered as punishable offence and action will be taken in this regard and the expenses to be incurred or charged towards this, will be recovered from the title holder/khathedar as arrears of land revenue".

20. Accordingly, in terms of the condition No. 9/8 of the conversion order referred to above, the applicant executed agreements/undertakings in respect of lands situate in survey numbers referred to above. Since the material contents of the undertaking/agreement executed by the applicant Ms. Leela/Mrs. Isle Jagtiani are more or less similar and identical, contents in one of such undertakings / agreements is being reproduced for the sake of brevity. It reads thus.-

"Whereas the permission has been granted by the Tahsildar, Devanahalli Taluk, in his Notice No. ALN. SR 36/90-91, dated and whereas I have been called upon to file an agreement that I shall abide by the conditions imposed by the learned Tahsildar, Devanahalli Taluk, permitting to utilise the land for non-agricultural residential purpose only.

"The land will be used for the specific (non-agricultural residential) purpose only within a period of two years. The converted land will be used for the bona fide use of the applicant and if alienated, this order will be revoked".

The phut kharab, if any, will be reserved to Government u/s 67 of the KLR Act, 1964.

Necessary licence etc., will be obtained from the competent authority before the commencement of the work of construction on the land. The purpose of sanction will be effectuated within two years from the date of this order.

Non-compliance with the any of the conditions specified here in above will result in cancellation of these orders of sanction as well as initiating of proceedings and penalties provided under the Section 96 of the KLR Act, 1964. Constructions if any, put up in such a case are also liable to be demolished without compensation and the cost incurred to cover thereof will be recovered from the khatedar as arrears of land revenue. The proportionate assessment of the land is written off the accounts".

21. Subsequently, as stated by the Companies in paragraph 5 of the writ petition, Ms. Leela Jagtiani, sold 22 acres 38 guntas of lands in Kottige Thimmanahalli Village, to five persons namely: (i) Azam Jan, (ii) Mr. Mouzam Jan, (iii) Mrs. Najamunnissa, (iv) Mrs. Jamal Fathima and (v) Mr. Asgar Jan, who, by contributing their respective lands, constituted a partnership firm namely M/s. Village De Nandi, which was subsequently converted into a Private Limited Company namely M/s. Village-De-Nandi (Private) Limited (Petitioner No. 1) and thus it claims to be the present owner of the said lands.

22. Similarly, as stated by the Companies in paragraph 8 of the writ petition. Mrs. Isle Jagtiani and Mr. Keshu Jagtiani, under the sale deeds dated 4-1-1992 and 15-3-1993 respectively, sold the lands to the extent of 33 acres 09 guntas each in Kottige Thimmanahalli Village, to a partnership firm namely M/s. Foot Hills Resorts, which was subsequently converted into a Private Limited Company namely M/s. Foot Hills Resorts (Private) Limited (Petitioner No. 2) and thus it claims to be the owner of the said lands.

23. According to the Companies, Ms. Leela Jagtiani under the sale deed dated 1-12-1992, sold the lands to the extent of 29 acres 02 guntas in Sonnenahalli Village and K. Amanikere Village, to the aforesaid M/s. Foot Hills Resorts (Private) Limited (Petitioner No. 2) and thus it claims to be the owner of the said lands.

24. Similarly, as stated by the Companies in paragraph 9 of the writ petition,

Mrs. Isle Jagtiani and Mr. Keshu Jagtiani, under the sale deed dated 4-1-1993 and 15-3-1993 respectively, sold the lands to the extent of 35 acres 31.5 guntas each in Kottige Thimmanahalli Village, to a partnership firm namely, M/s. Pennar Hotel and Resorts, which was subsequently converted into a Private Limited Company namely M/s. Pennar Hotel and Resorts (Private) Limited (Petitioner No. 3) and thus it claims to be the owner of the said lands.

25. The Companies have further stated in para 10 of the writ petition that the entire lands falling to their coffers in the manner as stated above had been leased out to M/s. Nandi Hills and Resorts Limited, which is not a party to the present proceedings, and which according to them is a leading Hotel Groups of India (in short, the "lessee-Company"). The lessee-Company appears to have made an application on 25-9-1994 to the Director of Tourism through M/s. Jansons Investments Private Limited under Single Window Agency for clearance of the Project called Nandi Hills Golf and Health Resort, which was approved in the third State Level Single Window Agency Meeting dated 26-9-1994 by the Member- Secretary-SWA and Director of Tourism, under his letter dated 6-10-1994 (Annexure-D). Interestingly, the petitioner-Companies have avoided to disclose the inter se relationship between the said M/s. Jan-sons Investments Private Limited and the lessee-Company.

26. From the facts narrated above, it becomes quite evident that though the Jagtianies had obtained the permission for diverting the agricultural lands held by them bona fide for non-agricultural purposes, namely, residential or commercial or SSI and that too within a period of two years from the date of the said orders of permission, but instead of using the lands for the said purposes, those were sold to predecessors-in-interest of the companies.

27. Moreover, admittedly, in terms of Section 107(I)(v) of the KLR Act, the State Government has yet to grant approval for exempting the lands from the provisions of the KLR Act which if granted would have been subjected to condition Nos. (2) and (3) of Rule 38-A of the Karnataka Land Reforms Rules, 1974 (hereinafter the "Rules").

Reg. Exemption proceedings u/s 107(I)(v) of the KLR Act

28. Section 107(I)(v) of the KLR Act reads as under:-

"107. Act not to apply to certain lands.-(1) Subject to the provisions of Section 110, nothing in this Act, except Section 8, shall apply to lands.-

(i) xxx xxx xxx..... (v) used for such stud farms as are in existence on the 24th day of January, 1971 and approved by the State Government, subject to such rules as may be prescribed".

29. Rule 38-A of the Karnataka Land Reforms Rules, 1974 (in short, the "Rules") is of material importance for the present purposes. This reads thus.-

"38-A. Conditions of granting exemptions u/s 107(I)(v).-For claiming exemption

under clause (v) of sub-section (1) of Section 107, a stud farm shall have to satisfy the following conditions, namely:-

(1) The Stud Farm should have been in existence as on 24th January, 1971, duly registered with Bangalore Turf Club or any Turf Club in India.

(2) The land occupied by the Stud Farm shall be utilised only for the purpose of such Stud Farm, like breeding, rearing and maintenance of horses and allied purposes subject to sub-rule (4).

(3) If the land is not utilised for purposes of the Stud Farm, it shall be surrendered to Government subject to the provisions of the Act.

(4) An average of 2 hectares of land per animal shall be reserved for paddocks, stables and for growing fodder upto 50 animals, and 3/4 hectare per animal thereafter. (Foals below 4 months of age may not be calculated separately if they are in the same stable and the same paddocks of a Stud Farm)".

30. The Under Secretary to Government, Department of Revenue, in his affidavit dated 10-3-1998 after setting out the details regarding proceedings pending with the Government u/s 107(I)(v) of the Act, has stated that the matter regarding approval of exemption of lands in question from the provisions of the KLR Act is still pending consideration. We just wonder as to why these proceedings are still kept pending though the Government is very much aware about the sale of these lands to various individuals and firms and the land is admittedly not under use as stud farm. Anyhow, we do not feel it necessary to express anything more on the subject since we will expect the Government to appropriately dispose off the proceedings initiated u/s 107(I)(v) of the KLR Act with utmost expediency inasmuch as now more than two decades have already been lapsed and it is high time that the sluggishness should now translate into an effective action.

Reg. Filing of declaration u/s 66

31. Section 66 of the KLR Act reads thus.-

"66. Filing of declaration of holding.-(1) (a) Every person who on the date of commencement of the Amendment Act holds.-

(i) ten acres or more of lands having facilities for irrigation from a source of water belonging to the State Government; or

i) twenty acres or more of lands on which paddy crop can be grown with the help of rain water; or

iii) forty acres or more of lands classified as dry but not having any irrigation facilities from a source of water belonging to the State Government,

shall on or before 31st day of December, 1974; or

(b) xxx xxx xxx;

(c) xxx xxx xxx, furnish a declaration to the Tahsildar within whose jurisdiction the holding of such person or the greater part thereof is situated containing the following particulars, namely.-"

32. The Tahsildar, Devanahalli Taluk, in his affidavit dated 10-3-1998 (para 3) has stated that-

"I submit that as on 1-3-1974, Sri Leku Gopaldas Jagtiani and Kushi Gopaldas Jagtiani together were holding 148 acres 6 guntas including pot kharab of 3 acres and 18 guntas. Out of about Sy. Nos. 2, 3, 4, 5, 6 and 7 of Kottige Thimmanahalli Village and Sy. No. 7 of Karehalli Amanikere Village, the lands measuring an extent of 11 acres 32 guntas are wet lands".

In support of the above statements, he had produced original revenue records and xerox copies of the same have been placed on the records of the present appeals.

33. In order to contradict the above statement made by the Tahsildar, Mr. Chandrashekar, brought to our notice the Letter No. ASP:LRF:3:96-97, dated 14-9-1996, written by the Tahsildar to the Assistant Commissioner communicating that the enquiry made by the Government for the purpose of proceedings u/s 107 of the KLR Act, whereunder he described the lands in question as "D" category lands. Faced with the situation, the Tahsildar, in his affidavit dated 19-3-1998 categorically admitted that under some mistaken impression he has set out categorisation of the lands in question.

34. In para 4 of the affidavit dated 19-3-1998, it has been stated thus.-

"I submit that at the time of filing of affidavit before this Hon"ble Court on 10-3-1998, I perused the revenue records and found that the lands in Sy. Nos. 2 to 7 of Kottige Thimmanahalli and a portion of Sy. No. 7 of Karahalli Amanikere Villages are wet lands growing paddy crops thereon. Till then, I was under the bona fide mistaken impression that they are all dry lands".

35. Rule 23 of the Rules provide that declaration of holdings to be furnished under sub-sections (1) and (2) of Section 66 is to be in Form 11. Admittedly, in the present case, the Jagtiani brothers though were holding lands in excess of the limits prescribed u/s 66(1)(a) of the KLR Act, did not file declaration in Form No. 11. Accordingly, the Tahsildar initiated proceedings u/s 66-A of the KLR Act by issuing notice dated 19-7-1996 and directing them to file declaration within seven days from the date of service of notice. Pursuant to the said notice, the General Manager (D) of the lessee-Company, inter alia, sought one month's time to furnish details of the lands. On 7-8-1996, one representative of the lessee-Company namely Mr. Col. Saleem submitted affidavit of Mr. Khushi Jagtiani and Mrs. Isle Jagtiani setting out certain details of the lands. The Tahsildar has stated in his affidavit that since despite service of notices statutory declarations were not filed, therefore on 9-9-1996 he imposed penalty of Rs. 500/- in terms of Section 66-A(1)(a) of the KLR Act with further direction to file declaration in

Form 11 within 30 days from the date of receipt of the order. The records further disclose that the said amount was remitted through a challan dated 13-9-1996 by the General Manager (D) of the lessee-Company and subsequently they have filed some documents purporting to be in Form 11 which according to the Tahsildar is not in order. The Tahsildar in his affidavit has referred to various correspondences which according to us do not require any detailed reference though the same may be relevant for considering the appropriateness of the said proceedings initiated by the Tahsildar as and when called in question before the appropriate forum.

36. For the present, it is suffice to record the statement of the Tahsildar as set out in para 7 of his affidavit dated 10-3-1998 which is to the following effect.-

"I submit that even as on today neither Mrs. Isle Jagtiani nor Mr. Khushi Gopaldas Jagtiani have complied with the mandatory provisions of Section 66 of the Karnataka Land Reforms Act and have failed to file declaration in Form No. 11 as prescribed under Rule 23 of the Karnataka Land Reforms Rules. I submit that I am taking further action in the matter as per the provisions of Section 66 of the Karnataka Land Reforms Act".

37. The above statement becomes relevant for the issues involved herein, because of sub-section (2) of Section 66-A which reads thus.-

"66-A. Penalty for failure to furnish declaration.-

(1) XXX XXX XXX. (2) If such person, fails to comply with the order within the time granted, the right, title and interest of such person in the land held to be the extent in excess of the ceiling area shall, by way of penalty, be forfeited to the State Government and shall thereupon vest in the State Government".

38. Section 112-A(q) of the KLR Act empowers the Tahsildar to pass order imposing penalty u/s 66-A of the KLR Act. Therefore, if the proceedings u/s 66-A(2) are under contemplation of being initiated then, if the stand taken by the Tahsildar is found to be maintainable, it may lead to forfeiture of lands to the extent it is found in excess of ceiling area prescribed u/s 63 of the KLR Act. Whether, there is in fact any lands in excess of ceiling limit or not, is a matter which needs to be determined and decided by the authorities under the KLR Act.

Reg. Proceedings u/s 67(I)(b) of the KLR Act before the Land Tribunal

39. From the affidavit dated 18-3-1998 filed by the respondent-Assistant Commissioner, who is also the Chairman of the Land Tribunal constituted u/s 48 of the KLR Act, it has been brought on record that the proceedings u/s 67(1)(b) of the KLR Act has been initiated by the Tribunal for determination of the extent of holdings and the area by which such extent exceeds the ceiling area. The said proceedings has been numbered as LRF 3 of 1996-97. The original file of the said proceedings had been placed before us. In the affidavit, it has further been stated that the said proceedings had been initiated on the basis of a "note" placed by the office before the Secretary of the Tribunal, who is none else than

the respondent Tahsildar. The Tahsildar, on the basis of the said office "note" seems to have issued notices to the interested parties.

40. Nothing further worth material seems to have transpired in the said proceedings. Elaborate statement by way of affidavit has been filed by the Assistant Commissioner to justify his stand on this aspect but we do not feel like wasting our time in considering the same since it is not material for the present purpose. But what is intriguing and disturbing is that the said proceedings appears to have been initiated without giving due regard to the provisions of Section 67 of the KLR Act which can only reflect the self contradictory stand taken by the Tahsildar as noticed above. According to him, no declaration in terms of Section 66 of the KLR Act was filed. If that be so, proceedings under the provisions of Section 67 of the KLR Act before the Tribunal for determination of extent of exceeding ceiling area can be undertaken only if the Tahsildar remits a copy of the declaration with concerned records for being placed before the Tribunal.

41. In the present case, admittedly, the proceedings before the Tribunal has been initiated on the basis of mere "office note" and not on the basis of the declaration filed by the land holders. But, since the said proceedings are still pending, therefore, we do not want to say anything further about the manner of functioning of the statutory authorities which, on determination of further facts, may be found to be highly deplorable.

Reg. Proceedings u/s 83 of the KLR Act

42. Section 74 of the KLR Act prohibits alienation of holding under certain circumstances. It reads thus:-

"74. Prohibition of alienation of holding.-On and from the date of commencement of the Amendment Act no person owning land in excess of the ceiling limit specified in Section 63 or 64 shall alienate his holding or any part thereof by way of sale, gift, exchange or otherwise until he has furnished a declaration u/s 66 and the extent of land if any, to be surrendered in respect of that holding has been determined and an order has been passed u/s 67 and any alienation made in contravention of this section shall be null and void".

43. Section 83 of the KLR Act provides for enquiry for illegal transactions and in appropriate cases permits the prescribed authority to pass an order to forfeit the lands to the State Government as a matter of penalty. This section reads as under:-

"83. Inquiry regarding illegal transaction.-The prescribed authority shall, after a summary inquiry, determine whether the transaction reported to it u/s 82 or coming to its notice in any other manner is in contravention of or is unlawful or invalid under the provisions of this Act, as they stood before or as they stand after the date of commencement of the Amendment Act and make a declaration accordingly. Any transaction so declared to be in contravention of or is unlawful

or invalid under any of the provisions of this Act as they stood before or as they stand after the date of commencement of the Amendment Act shall be null and void. The land in respect of which such transaction has taken place shall, as penalty, be forfeited to and vest in the State Government free from all encumbrances. No amount is payable therefor".

44. The Assistant Commissioner, being the prescribed authority for the purposes of Section 83 of the KLR Act, has already initiated proceedings u/s 83 of the KLR Act. In his affidavit dated 10-3-1998, he has stated that he had issued notice in the said proceedings to Mrs. Isle Jagtiani W/o. Lekhu Jagtiani, her two daughters, Khushi Jagtiani, as also Ms. Leela Jagtiani on 20-6-1997 and after they having appeared through their Counsel filed their objections. The matter is thus pending enquiry and for final orders.

45. In the Companies rejoinder to the State's LA. for additional grounds, it has been stated that in due course of time, quite a good extent of lands held by the Jagtiani Brothers has lost its identity as agricultural land both for the purpose of Revenue Act as also the Land Reforms Act either because of non-user or for having been put to other uses. In our opinion, the plea is just to be rejected. In the case of State of Karnataka and others Vs. Shankara Textiles Mills Ltd., , it has been held that:-

"The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would, in particular render the provisions of Section 95(2) of the Revenue Act, nugatory. Such an interpretation is not permissible by any rule of the interpretation of statutes".

46. On a close analysis of the above facts as placed before us and the material statutory provisions as noticed above, prima facie, it appears to us that:-

(a) Even if the lands in question are held to be qualifying for exemption u/s 107(I)(v) of the KLR Act, still consequent upon the decision of the Jagtiani brothers not to use it for Stud Farm, in compliance to statutory condition no. (3) of the Rule 38-A of the KLR Rules, the lands could have been only surrendered to the Government under the provisions of the said Act, subject to payment of compensation.

(b) In case the lands in question were not qualified for exemption u/s 107(I)(v) of the KLR Act, the following consequences appears to be inevitable:

(i) Keeping in view the extent of the lands, the Jagtiani brothers were statutorily bound to file declarations in terms of Section of 66 of the KLR Act.

(ii) By operation of Section 74, they were prohibited from alienating the lands by way of sale, gift, etc., and any alienation made in contravention thereof was null

and void.

(iii) In case of failure, as it has happened in the present case, they were liable to monetary penalty in terms of Section 66-A of the KLR Act which they have already suffered and accepted.

(c) In either of the events as noticed in sub-paras (a) and (b) above, keeping in view the penal provisions contained u/s 83, proceedings in respect of which has already been initiated by the Assistant Commissioner, the lands having already been alienated can be subjected to penalty of forfeiture so as to vest the same in the State Government free from all encumbrances and without payment of any amount therefor.

47. We have expressed our views on the consequences which may ultimately follow on conclusion of the proceedings pending before the State Government, and the Assistant Commissioner under Sections 107(I)(v) and 83 of the KLR Act, because if under the said proceedings, it is ultimately held against the original landowners, then neither the Companies nor their lessee-Company, M/s. Nandi Hills Hotel and Resorts Limited, irrespective of the validity or invalidity of the orders of conversion (Annexure-B and C series) or their deemed cancellation (Annexure-L series) can be of any avail to them because the sale made in favour of the Companies by the Jagtiani brothers itself will be null and void and the lessee-Company cannot insist for approval of their project by BMRDA.

48. Before proceeding further, at this very stage, we may notice an innovative fraudulent device adopted by the Companies for securing an order in favour of their lessee-Company though it was not a party to the writ petition. In paragraph 10 of the writ petition, after stating that the lands were leased out to M/s. Nandi Hills and Resorts Limited for tourist development activities, it was stated that "the petitioners submit that for the purpose of convenience and any reference hereafter to the petitioners in this petition shall include the petitioners" lessees M/s. Nandi Hills and Resorts Limited. It is quite clear to us that this crafty statement had been made in order to justify the seeking of prayer at (c) in the writ petition i.e., for mandamus directing the 2nd respondent-BMRDA to accord sanction to the project of the lessee-Company, which, for some undisclosed reasons, has avoided to become a party to the writ petitions. While hearing the appeals, we were bewildered as to how relief could have been granted in favour of the person or Company which is not a party before the Court. The mystery could be resolved only on careful reading of the entire writ petition.

49. We wish that such dubious methods should not have been adopted by the parties since the purity and solemnity of the judicial process very much depends on the maintenance of the trust reposed in the parties and their learned Counsel. Judges cannot be expected to read every line and paragraph of the pleadings particularly in writ proceedings but this should not be availed for obtaining orders fraudulently. We strongly deplore and deprecate the said ingenious method adopted by the Companies. These observations acquire more importance

because by obtaining final order in terms of prayer at (c) in the writ petition, within 20 days from the date of the said order, the lessee-Company could obtain approval from the respondent-BMRDA and despite having full knowledge of the above proceedings under the KLR Act, wanted to speed up the project, may be to frustrate the said proceedings.

50. Having noticed the material facts in the context of the statutory provisions of the KLR Act, now we find ourselves in a more comfortable position to attend to the appropriateness of the submissions made by the learned Advocate General on behalf of the State Government and its officers and Sri Shanti Bhushan, learned Senior Advocate, appearing for the Companies, in the two sets of appeals preferred against the same common judgment of the learned Single Judge. The learned Advocate General has questioned the validity of the order passed by the learned Single Judge primarily on two grounds, namely: (i) if the order passed by the revenue authorities were found to be unsustainable for non-compliance with the principles of natural justice, then while quashing the same liberty should have been reserved to the Tahsildar to pass orders afresh after giving notice to the persons interested and likely to be affected including the owners and after giving them a reasonable opportunity of hearing and (ii) insofar as the direction issued to the BMRDA to accord sanction to the plan submitted by the lessee-Company is concerned, we are of the considered view that it was not permissible for the learned Single Judge to issue any such mandamus since under writ jurisdiction the statutory authorities can be directed only to discharge their duties regarding passing of appropriate orders, at best for consideration of the case in accordance with law but not for passing specific order. Moreover, according to the learned Advocate General, the issue relating to according of permission by BMRDA has to necessarily depend on the ultimate order to be passed by the revenue authorities permitting the land for non-agricultural use which still needs to be decided by them.

51. Insofar as the appeals filed by the Companies are concerned, their plea is that the learned Single Judge should have allowed the writ petition by quashing the orders passed by the Tahsildar and the Assistant Commissioner not only on the ground of non-observance of the principles of natural justice but also on merits since according to the Companies, keeping in view the provisions contained under Sections 95 and 96 of the Act for non-observance of the conditions of conversion order, only penalty can be imposed and it cannot result in invalidation of the conversion order itself. It has also been contended that there is no provision under the Act authorising the revenue authorities to exercise any power at the detriment of the owner since once the permission for conversion is granted, the land ceases to be agricultural in nature.

52. On hearing the learned Counsel for the parties, we are of the view that the impugned orders passed by the Tahsildar at Annexure-L1 to L12 and Assistant Commissioner at Annexure-P were rightly set aside by the learned Single Judge on the ground of violation of principles of natural justice since before passing of

the said orders by the Tahsildar no opportunity was given to the interested parties. We also agree with the learned Advocate General that notwithstanding quashing of the said order on the ground of violation of principles of natural justice, an opportunity should have been reserved to the respondent Tahsildar to pass orders afresh after giving notice to the parties likely to be adversely affected.

53. So far as the prayer regarding the issue of mandamus to the BMRDA to grant approval to the project submitted by the lessee-Company M/s. Nandi Hills and Resorts Limited is concerned, the said prayer could not have been granted because the lessee-Company, which is an independent legal entity, had not approached this Court for seeking the said prayer. Moreover, this Court under writ jurisdiction at best could have directed the BMRDA to consider the application and dispose of the same in accordance with law within the specified time framed but it was not permissible for this Court to issue positive direction for according such permission. This Court under Article 226 of the Constitution of India can, in appropriate cases depending upon the facts and circumstances direct for commencing or accelerating the decision making process but cannot dictate the decision itself. In the case of *State of Haryana Vs. Naresh Kumar Bali*, (para 16), the Supreme Court has held that.-

"The High Court could have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself; and it is no part of the Court's duty to exercise the power of the authorities itself. There is a widespread misconception on the scope of the interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226".

54. On behalf of the BMRDA, it has been submitted that the order dated 1-1-1997 has been passed by taking into account that the order cancelling conversion order was quashed by this Court since they did not approve any plan for development over agricultural land. A reading of the order of approval of the BMRDA shows that it has been primarily passed in compliance to the impugned order of the learned Single Judge.

55. Taking into account the totality of the facts and circumstances and the legislative schemes under the two Acts under reference, we declare and direct that.-

(i) the appellate order dated 4-10-1996 passed by the Commissioner (Annexure-P) stands quashed;

(ii) the order of the learned Single Judge directing the BMRDA to accord sanction to the petitioner's project is set aside;

(iii) accordingly, the consequent sanction order dated 1-1-1997 passed by Metropolitan Commissioner, BMRDA in favour of M/s. Nandi Hills Hotels and Resorts Limited, the lessee-Company is also quashed;

(iv) the State Government should finally conclude the proceedings before it u/s 107(I)(v) of KLR Act within Six Weeks from today.

(v) the Assistant Commissioner should finally dispose off the proceedings pending before him u/s 74 read with Section 83 of the KLR Act within Eight Weeks from today;

(vi) if, keeping in view the orders passed by the State Government and Commissioner, if situation so warrants, then the Tahsildar shall pass fresh orders regarding permission for use of the lands for non-agricultural purposes after giving reasonable opportunity of hearing to all the interested parties, and lastly

(vii) after conclusion of the above proceedings, if any person including the Companies or their lessee can satisfy BMRDA that they have acquired a legal right for use of the land in question for non-agricultural purposes, then BMRDA may proceed to process the applications filed by such persons and pass appropriate orders in accordance with the statutory provisions.

56. Keeping in view the said findings and directions of ours, the State appeals are allowed and that of the Companies are dismissed. The parties to bear their own costs.