

(1987) 04 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 19919 to 19954 and 21172 to 21177 of 1982

The Bangalore Water Supply and Sewerage Board

APPELLANT

Vs

Kantha Chandra and Others

RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Karnataka Land Revenue Act, 1964 — Section 53, 95, 95 (2), 95 (5)

Karnataka Town and Country Planning Act, 1961 — Section 148, 148 (1)

Citation : AIR 1989 Kar 1

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : V. Krishnamurthy and Kalasa Shamanna, for the Appellant; M.R. Achar, Government Advocate, M.S. Gopal and G.S. Visweswara, for the Respondent

Judgement

1. In all these petitions under Articles 226 and 227 of the Constitution, the petitioner is the Bangalore Water Supply and Sewerage Board, Bangalore (hereinafter referred to as the "Board"). The Respondent1 in each one of these petitions is a different person who has obtained permission to convert agricultural lands for non-agricultural purposes viz., for construction of buildings. Respondents 2 to 5 are common to all these petitions. They are: The Special Deputy Commissioner Bangalore. The Karnataka Appellate Tribunal, Bangalore, (for short the "Tribunal") The State of Karnataka and he D.L.F. Universals Ltd., New Delhi.

2. The petitioner has sought for a declaration that the provisions contained in sub-sec. (5) of S. 95 of the Karnataka Land Revenue Act, 1964 (Karnataka Act 12 of 1964) (hereinafter referred to as the Act") are of Art 14 of the Constitution. In addition to t is, the petitioner has sought for quashing the orders produced as Annexures-A to Y, in W.P. 19919 to 19954/82. The prayer made in W.P. Nos. 21172 to 21.177/1982 is included in the prayer made in W.P. Nos. 19919 to 19954/82 inasmuch as Annexure-A produced in W.P.No. 21172 to 21177/1982

which is sought to be quashed be quashed in W.P. No. 19919 to 19954/1982.

3.1. The Board is a Corporate Body constituted under the provisions of The Bangalore Water Supply and Sewerage Act, 1964 (Karnataka Act No. 36/1964) (hereinafter referred to as the "Bangalore Water Supply Act"). Thippagondanahalli (for short T.G. Halli) Reservoir is one of the major reservoirs vested in the Board with effect from 1-12-1964. It is one of the main sources of water supply to the Metropolitan City of Bangalore. This Reservoir is fed by Arkavathy river which passes through the lands situated in Gangenahalli, Varthur, Narasimhapura and Kurubarahalli villages in Magadi Taluk in Bangalore District. The catchment area of Arkavathy river, among other areas, also comprises of the lands in the aforesaid villages.

3.2. The 1st respondent in each one of these writ petitions has purchased the lands in the aforesaid 4 villages. These lands are situated on the banks of Arkavathy river. After purchasing the lands and after a lapse of some time, each one of them sought permission in the years 1978 and 1979 to convert them for non-agricultural purposes u/s 95 of the Act. In the first instance, there were 36 applications.

Thereafter six more applications were filed. All those applications were granted by the 2nd respondent, inasmuch as, in 8 cases, there were express orders passed granting permission; in the remaining cases - in some of them there were orders passed rejecting the applications and in some no orders were passed - however in none of the remaining cases, the orders were communicated to the applicants within a period of 4 months from the date of receipt of the applications. Therefore, in the remaining cases, the permission sought for was deemed to have been granted u/s 95(5) of the Act in the months of June or July 1979.

4.1. According to the case of the Board, it came to know of the grant of permission for non-agricultural purposes in respect of vast extent of land lying on the banks of Arkavathy river in the month of September 1979 on the report made by the technical staff of the Board. The specific case of the Board is that by reason of the establishment of a township on the banks of the river Arkavathy close to T. G. Halli reservoir the water will be polluted and it will also be depleted as bore wells are proposed to be drilled in the area over which new township is proposed. Consequently the quality and quantity of water supply to Bangalore City will be adversely affected. The further case of the Board is that it is statutorily bound to supply water not only free from pollution but it is also bound to ensure sufficient supply of water to the residents of Bangalore; that in order to fulfil these statutory obligations, it is necessary for the Board to see that the source of water supply to T.G. Halli Reservoir is not affected in any manner; that as the Arkavathy river is the main source of water to T.G. Halli Reservoir and as it is going to be polluted by reason of establishment of a township on the banks of Arkavathy river, the Board is adversely affected by the permission granted or deemed to have been granted to respondent-I in each one of these petitions.

4.2. The further case of the Board is that for the purpose of due discharge of its statutory obligations, it became necessary to challenge the orders granted by the 2nd respondent. Accordingly it preferred 4 appeals before the 3rd respondent against the orders passed in Cases Nos. ALN.SR.150, 163, 181 and 193 of 78-79 being appeal Nos. 3, 4, 5 and of 1980 that in the remain on petitions were filed before the Divisional Commissioner, who by the order dated 30th September 1980 held that the revision petitions were not maintainable. Therefore, the Board took back the revisions and presented them before the 3rd respondent as appeals. These appeals were registered as Appeals Nos. 12 to 40, 42 and 43 of 1981 and heard by the Tribunal along with Appeals Nos. 3 to 6 of 1980.

5.1. Before the Tribunal among other contentions, respondent- I in each one of these petitions also raised preliminary objections as to the maintainability of the appeals on two grounds viz., that the Board was not a party to the proceeding, therefore, it could not be considered to be an "aggrieved person; that there being no express orders, the appeals were not maintainable. The Bench of the Tribunal consisting of two members, felt doubt about the maintainability of the appeals and the locus standi of the Board to maintain the appeals. Therefore, it formulated the following three points and referred them to a Full Bench of the Tribunal :

1. Whether a third party can prefer an appeal from what is called a deemed order, when in fact there is no order as such, and the permission for conversion applied for should be deemed to have been granted?
2. If there can be no appeal from a deemed order, whether it is necessary to entertain an appeal from an express order of conversion and whether it is not possible to hold that Section 95 of the Land Revenue Act read as a whole does not consider that any order express or deemed would cause such injury to a third person as is required to be remedied in appeal?
3. Any other point that may arise for a complete and effectual decision of the present batch of appeals.

5.2. The Full Bench of the Tribunal came to the following conclusions:

"i) When permission for conversion is deemed granted under S. 95(5) of the Land Revenue Act there is no "Order" which can be called in question in appeal. It is not possible to assign a date for the so-called "deemed order" and much less would be possible to expect the copy of the order which S. 53 of the Land Revenue Act requires to be produced with every appeal. Permission is granted by law and not by an order of the Deputy Commissioner and so there can be no question of an appeal against permission granted by law. It may be noticed that there would be no scope at all for reversing or nullifying the permission deemed granted. There will be no error capable of correction by the Appellate Authority.

ii) Granting or refusing of permission for conversion appears a matter between the Deputy Commissioner and the occupant of the land or any applicant for that

matter and grant of permission cannot affect or prejudice the rights of others. The provision for deemed permission on default committed by the Deputy Commissioner manifests that legislature also does not consider that" permission for conversion is likely to affect or prejudice others. The Deputy Commissioner is vested with a discretionary power to refuse permission to grant subject to conditions, and he is under no duty to hold a public enquiry inviting all interested persons. If such were the intention of legislature there would not have been a provision for a deemed permission.

iii) To hold that an appeal is competent from an express order of permission is to produce the incongruous result that such an order prejudices third parties while a deemed permission flowing from inaction or default of Deputy Commissioner would not. To avoid such anomalous and discriminatory situation, it must be held that no third party can feel aggrieved by an express order of permission for conversion. Such a construction would not lead to practical difficulties.

iv) After all the permission for conversion is not a licence to injure the rights of others and it cannot be used as a shield against actions for injunctions or damages.

v) No third party can prefer an appeal questioning the permission "express" or deemed for conversion. Such a third party can enforce its rights before other courts or Tribunals and not before the Revenue Courts."

5.3. Accordingly, the Tribunal dismissed all the appeals by the order dt. 13-8-1981 produced as Annexure-A. Following the order of the tribunal-Annexure-A, the 2nd respondent has granted permissions to 18 persons as per the order dt. 27-3-1982 produced as Annexure-Y in W.P. Nos. 19919 to 19954/1982 and as Annexure-A in W.P.Nos.21172 to 21177/1982 even though their applications were rejected earlier. The remaining persons have been granted permissions as per Annexures-B to X on the various dates ranging from 4-6-1979 to 2-12-1981.

6. Sri V. Krishna Murthy learned Senior Counsel for the Board and Sri Mridul, learned Senior Counsel along with learned Counsel Sri G. S. Visweswara, for the 5th respondent, Sri M. S. Gopal, learned Counsel for the 1st respondent and Sri M. R. Achar, learned Government Advocate appearing for respondents 2 to 4 were heard.

7. To avoid repetition, it is not necessary to summarise the contentions of the Board and also that of the respondents as the same will be adverted to while considering the points formulated for determination.

8. Having regard to the contentions urged on both sides, the following points arise for consideration:

1. Whether the provisions contained in sub-sec. (5) of S. 95 of the Act are violative of Art. 14 of the Constitution?

2. Whether the Board has locus standi to maintain the writ petitions?
3. Whether the Board can be considered to be an "aggrieved person" to challenge the permissions granted or deemed to have been granted by the 2nd respondent to the 1st respondent in each of these petitions under sub-secs. (2) and (5) respectively of S. 95 of the Act by way of an appeal under S. 49 of the Act?
4. Whether the order of the tribunal dt. 13-8-1981 produced as Annexure-A is valid in law?
5. Whether the orders of the 2nd respondent granting permission to respondent-1 in each one of these petitions to convert agricultural lands to nonagricultural purposes are valid in law?
6. What order?

Point No. 1:

9. Sub-section (5) of S. 95 of the Act reads thus:

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

(1) to (4)

(5) Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within a period of four months, from the date of receipt of the application, the permission applied for shall be deemed to have been granted."

10.1. Section 95 consists of two parts. The first part deals with the use of agricultural land for better cultivation and the second part deals with the use of agricultural land for purposes other than agriculture. That it is so, is made clear from the very heading of the section.

10.2. The first part is dealt with in sub-sec. (1) and the second part is dealt with in sub-secs. (2) to (7) of S. 95. As per sub-sec. (1), an agricultural land can be used for erection of buildings or construction of wells, or tanks or making any other provision thereon for better cultivation of the land or its more convenient use for the aforesaid purpose. This again is subject to any law for the time being in force regarding erection of buildings or construction of wells or tanks on the agricultural land for agricultural purpose. No permission under Sec. 95 of the Act is required to be obtained for making improvements in the agricultural land for better cultivation of it or its more convenient use for the purpose of agriculture. Of course, construction of farm house, tanks, wells etc. for better cultivation, will have to be made in accordance with other law, if any that govern them.

10.3. Sub-section (2) of S. 95 of the Act provides for grant of permission for use of the agricultural land by the occupant for purposes other than agriculture. Sub-sec. (3) provides under what circumstances such permission may be refused.

Sub-sec. (4) provides for imposition of conditions on diversion of agricultural land for nonagricultural purposes in order to secure health, safety, and convenience of the occupiers. Sub-sec. (5) as reproduced above provides for deemed grant of the permission applied for, for using agricultural land for nonagricultural purpose. Other provisions are not material for our purpose. Therefore, the same are not referred to. Thus the permission is required to be obtained for using agricultural land for non-agricultural purpose. Non-agricultural purpose is normally for construction of buildings or for use of the agricultural land for industrial, commercial, and other purposed which are not connected with cultivation of agricultural lands.

11. The contention of the petitioner is that by reason of this provision, even if the decision is taken in time by the Deputy Commissioner to reject the application and that decision is despatched from his office within the time, and for no fault of his, if the communication containing the decision is not delivered to the applicant within 4 months from the date of receipt of the application, the permission applied for even if actually refused by the Deputy Commissioner shall be deemed to have been granted. Therefore, it is submitted that the consequences of sub sec. (5) of S. 95 of the Act are disastrous, and in addition to this it also enables the Deputy Commissioner to be arbitrary in the matter, by being inactive, as it has happened in the instant case.

12. Deeming provisions are not uncommon to law. Sometimes such provisions are made to avoid hardship being caused to the applicants who are required to take permission under the law for doing certain acts. The impugned provision provides that the permission applied for shall be deemed to have been granted if no decision of the Deputy Commissioner on the application is communicated to the applicant within a period of four months from the date of receipt of the application. Similar provision relating to grant of permission are found in the enactments governing the local bodies. There are provisions which provide for deemed rejection also. For example, the Mineral Concession Rules, 1969 provide that in case an application for grant of mining lease or prospecting licence is not granted within a prescribed period by the concerned State Government, such an application must be deemed to have been rejected. "The Mineral Concession Rules further provide for revision against the deemed rejection also. Such a revision lies to the Central Government.

13. It is not possible to appreciate how sub-sec. (5) of S. 95 of the Act can be held to be violative of Art. 14 of the Constitution. It is not a class legislation. It is applicable to all those who seek permission for use of agricultural land for purposes other than agriculture under sub-sec. (2) of S. 95 of the Act. Every such applicant is entitled to take advantage of the provisions contained in sub-sec. (5) of S. 95 of the Act if the decision of the Deputy Commissioner is not communicated to him within a period of 4 months from the date of receipt of the application. In such an event, the applicant is entitled to take advantage of the provisions contained in sub-sec. (5) of S. 95 of the-Act and proceed on the basis

that the permission applied for shall be deemed to have been granted, It is also not possible to hold that sub-sec. (5) of S. 95 of the Act empowers the Deputy Commissioner with unrestricted powers without any guide-lines. What all it provides is that in case the decision of the Deputy Commissioner, on the application filed under sub-sec. (2) of S. 95 of the Act, one way or the other, is not communicated to the applicant, the permission sought for by him for use of the agricultural land for purposes other than agriculture, shall be deemed to have been granted. Far from placing any restriction on the right of an owner or occupier of an agricultural land, and enabling the Deputy Commissioner to be arbitrary it enables the applicant to have the result of his application made known to him made under sub-sec. (2) of S. 95 of the Act one way or the other on or before the expiry of 4 months from the date of receipt of the application by the Deputy Commissioner. Thus, the provision compels the Deputy Commissioner not only to decide the application in accordance with law but also to communicate his decision to the applicant within a period of 4 months from the date of receipt of the application by him. Thus the provision is intended to expedite the disposal of the application and it enables the applicant to have the result of his application within a period of 4 months. The provision is in favour of the subject. As such, it is not possible to hold that sub-sec. (5) of S. 95 of the Act is violative of Art. 14 of the Constitution, Accordingly, point No. 1 is answered in the negative.

Point No. 2:

14. The Board is constituted under the Bangalore Water Supply Act. The duties of the Board are enumerated in S. 15 of the Bangalore Water Supply Act. It is under the statutory obligation of providing, Supplying and improving the existing supply of water to the Bangalore Metropolitan Area and making adequate provision for the sewerage and the disposal of the sewage in the Bangalore Metropolitan Area, For the efficient discharge of its duties, the Board is empowered to exercise such powers and perform such functions as are conferred or imposed by the Bangalore Water Supply Act. Among other things, it has to ensure sufficiency and wholesomeness of water supplies within the Bangalore Metropolitan area. It has to prepare and carry out schemes for supply of wholesome water for domestic purpose within the Bangalore Metropolitan Area and so also to prepare and carry out the schemes for a proper sewerage and disposal of sewage of the Bangalore Metropolitan area. With a view to enable the Board to discharge its statutory duties, public reservoirs, tanks, cisterns, fountains, wells, pumps, pipes, taps, conduits and other works connected with the supply of water to the Bangalore Metropolitan Area including the head works and reservoirs at T. G. Halli and Hesaraghatta and the rising mains whether made at the cost of the Government, the Corporation or otherwise along with bridges, buildings, machineries, works materials and other things connected with and all land (not being private property) adjacent and appertaining to such works are vested in and made subject to the control of, the Board under S. 26 of the Act.

15. The lands in question are situated on both the banks of Arkavathy river which is the only source of feeding water to T.G. Halli Reservoir. "The Layout (Housing) Plan of Arkavathy Progressive Farmers Co-operative Society Ltd., Magadi Taluk, Bangalore District" was produced during the course of arguments. The correctness of the aforesaid layout plan was not disputed by any of the parties to these petitions. Respondent-1 in each of these petitions is a member of the aforesaid co-operative society. The 5th respondent claims to have acquired right, title and interest in the lands in question to raise a township from the aforesaid cooperative society and its members.

16. It is clear from the aforesaid layout plan that the co-operative society in question has planned to raise a big township on both the banks of Arkavathy River. There are two sectors of the township known as South Sector and North Sector. The South Sector is on one bank of the river and the North Sector is on the other bank. The south sector comprises 335 sites covering an area of 213.6 acres. The North Sector comprises 386 sites covering an area of 200.6 acres. Thus an extent of 414 acres is sought to be converted for nonagricultural purpose with about 700 and odd buildings. Thus a big township is planned to be raised on the banks of Arkavathy river, The area proposed is very close to T.G. Halli Reservoir. The case of the Board is that if such a big township very close to T.G. Halli Reservoir is allowed to come up on the banks of Arkavathy river which is the only feeding source of water to T.G. Halli Reservoir, the water in the reservoir will be polluted and depleted, and that as a result thereof, it would not be possible for the Board to ensure supply of wholesome and sufficient water to a major portion of Metropolitan area of Bangalore. Therefore, it is the case of the Board that it is very much affected by the permissions granted or deemed to have been granted by the Deputy Commissioner for converting the agricultural lands for non-agricultural purposes.

17.1. As far as the locus standi of the Board to invoke the jurisdiction of this court under Arts. 226 and 227 of the Constitution is concerned. I do not see any factual or legal hurdle whatsoever to straightway hold that the Board is entitled to maintain the writ petitions. The Board cannot be considered to be a person having no interest whatsoever in the subject matter of the impugned orders passed by the 2nd respondent. In addition to this, the Board is a public utility organisation. As it is already pointed out, it is under a statutory obligation to ensure wholesome water supply to the Bangalore Metropolitan area. Water, I mean wholesome water, is as much essential to human life as Oxygen is. It is not possible for any living being to get on without water. Similarly in these days of pollution, supply of wholesome water is very much essential. The Board can ensure this, provided it keeps its water reservoirs which supply water to Bangalore Metropolitan area free from pollution. For this purpose, it is also required to maintain the source of water to reservoir free from any sort of pollution. There should be every effort made to keep the water supply to Bangalore Metropolitan Area free from pollution. It is the duty of the residents of Bangalore not only to contribute their mite in this regard but also to help the

Board to enable it to keep the water supply free from pollution. By doing so, they will be helping themselves. Any effort made by the Board in this regard should be appreciated. The State Government also should render all possible assistance and help to enable the Board to ensure supply of wholesome water to Bangalore Metropolitan Area. There is a specific provision made in the Bangalore Water Supply Act prohibiting any person. from doing anything which will have the effect of causing pollution to the water supply to Bangalore Metropolitan Area. In this context, the provisions contained in S. 60(1)(e) of the Bangalore Water Supply Act are relevant to be noticed which read thus :

60.(1) No person shall :

a) to d) xx xx xx xx

e) bathe in, at or upon any water work or wash or throw or cause to enter therein any animal, or throw any rubbish, dirt or filth into any water work or wash or clean therein any cloth, wool or leather or the skin of any animal or cause water of any sink, or drain or any steam engine or boiler or any polluted water to turn or be brought into any water work, or do any other act whereby the water in any water work is fouled or likely to be fouled."

The definition of "water works" also includes the source of water supply to reservoirs. Thus the aforesaid provision prohibits all persons from committing any act which causes pollution of water supplied to Bangalore Metropolitan area. In addition to this, the quantity of water in the T.G. Halli Reservoir is, according to the Board, likely to be depleted by drawing water from the borewells to be drilled in the area in question. Therefore, the Board cannot at all be considered to be a stranger not having any interest in the subject matter of the proceedings in question.

17.2. It has sufficient interest in the matter so as to have a standing to challenge the impugned orders. Even otherwise, as far as the exercise of jurisdiction under Art. 226 of the Constitution is concerned, the conception of "locus standi" is being expanded wherever "public interest" is involved. Ensuring adequate supply of wholesome water to Bangalore Metropolis is a matter in which undoubtedly every resident of the Metropolitan Area is interested. Anything done which affects adequate supply of wholesome water, definitely affects the public at large. Therefore, in such a case. it becomes the duty of this Court to exercise jurisdiction under Article 226 of the Constitution.

17.3. In the instant case, public interest is involved because the case of the Board is that if the proposed township comes up on the banks of Arkavathy river, the water flowing into T.G. Halli Reservoir will be polluted, and water in the reservoir will be depleted. In such an event, as it is already pointed out, the residents of Bangalore Metropolitan Area are affected because T.G. Halli is one-of the sources of water supply to Bangalore Metropolitan Area.

17.4. The conception of "locus standi" is being liberalised and the scope is being

expanded day by day. In the case of S.P. Gupta Vs. President of India and Others, , (commonly known as "Judges case"), the Supreme Court has propounded a liberal view of "standing" so as to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law. Learned Author Sri M. P. Jain in his K. M. Munshi Memorial Lectures (First Series) on "Changing Face of Administrative Law in India and Abroad" while referring to rule of "standing" in the judicial review proceeding, has observed thus :

"Liberalization of standing rules appears to be a universal phenomenon, In the United States, gradually, rules governing standing to seek judicial review of agency action have been dramatically liberalised. Intervention by public interest groups in court adjudications have come to be permitted by judicial law-making. In the words Schwartz :

"No aspect of administrative law has been changing more rapidly than the law governing standing. Standing barriers have been sufficiently lowered in recent years

It is the expansion of standing that has made possible the veritable revolutions that have occurred in environmental law and the law of consumer protectionIf public interest claims are to be adequately considered in today's legal system, the concept of those able to vindicate the public interest must be accordingly expanded. Thus, standing has been granted to environmental and consumer bodies." He has further referred to the recent trend in India and has pointed out that Liberalization of standing shows that the function of administrative law is now undergoing a change again -- from vindication of personal rights against the administration to checking the misuse of power and administrative injustice whether or not an individual is directly injured by it. The change in the concept of standing indicates the change of emphasis and function of modern administrative law from "private law view to the public law view Ultimately he has concluded thus :

"There is no gainsaying the fact that in a developing democratic society, the courts have to play an activist role if law is to keep pace with social needs. Such an approach is very pertinent to administrative law for this branch of law is in its formative stage. Administration is not static but dynamic and. therefore, the norms to control it cannot also be static. What is needed, therefore, is a forward looking and creative Judicial attitude. The British courts have been doing so for some time now. The contribution of the British judges has been underlined by one of the present day activist judges, viz, Lord Diplock, who has stated recently that any judicial statements on matters of public law made before 1950 "are likely to be a misleading guide to what the law is today", and. further, that "the progress towards a comprehensive system of administrative law" has been "the greatest achievement of the English courts in my judicial lifetime." This shows (hat the complexion of the English administrative law has undergone a fundamental change since 1950. There is thus no reason for the Indian courts to

be reticent in this matter. Moreover, there is a much stronger reason in India for judicial creativity in the area of administrative law, viz., the inertia of Parliament to reform this branch of law and to bring it in conformity with the modern democratic thought. The Indian legislature has so far been singularly inactive and remiss in tackling constructively the problems of administrative law and suitably adapting the norms thereof to contemporary societal needs. Legislature inertia thus throws a tremendous responsibility on the judiciary to shape and mould administrative law as best as it can to serve adequately the needs of a developing and democratic society in India so that administrative dynamism may be met by a dynamic administrative law to protect the peoples' rights."

17.5. Even H.W.R. Wade in his treatise on "Administrative Law" 5th Edition while dealing with the topic "locus standi" has noted with reference to several authorities thus:

"The prerogative remedies, being of a "public character as emphasised earlier, have always had more liberal rules about standing than the remedies of private law. Prerogative remedies are granted at the suit of the crown as the titles of the cases show; and the Crown always has standing to take action against the public authorities, including its own ministers, who act or threaten to act unlawfully. As Devlin, J. said : "Orders of certiorari and prohibition are concerned principally with public order, it being the duty of the High Court to see that inferior courts confine themselves to their own limited sphere." In the same sense Brett, J. had said in an earlier case that the question in granting prohibition is not whether the individual suitor has or has not suffered damage, but is whether the royal prerogative has been encroached upon by reason of the prescribed order of administration of justice having been disobeyed. Consequently, the court is prepared to act at the instance of a mere stranger, though it retains discretion to refuse to do so if it considers that no good would be done to the public. Every citizen has standing to invite the court to prevent some abuse of power and in doing so he may claim to be regarded not as a meddlesome busybody but as a public benefactor. Parker, L.J. thus stated the law as to certiorari:

"Anybody can apply for it - a member of the public who has been inconvenienced or a particular party or person who has a particular grievance of his own. If the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Wherefore, however, it is made by a person who has a particular grievance of his own, whether as a party or otherwise, then the remedy lies *ex debito justitiae*"

This was a case where a news vendor obtained certiorari to quash the allocation of a street trader's pitch to a vendor of jellied eels, the magistrates having assigned the pitch without jurisdiction. Although the news vendor was a mere rival for the pitch, and had not been a party to the proceedings before the Magistrates, it was held that he was a person with a particular grievance and not a mere stranger. The same was held in the case of a local inhabitant who obtained the quashing of a highway order made without proper notice. A

ratepayer, likewise, has a particular grievance if the rating list it invalidly made, even though the defects will make no difference to him financially. In licensing cases a mere commercial rival who objects to the granting of the licence to another person has a particular grievance. So also has a neighbour who objects to a grant of planning permission. The extreme case, perhaps is that of newspapers who are held to be persons aggrieved by magistrates' orders affecting the rights of the press to report criminal proceedings."

17.6. However, Sri Mridul, learned Senior Counsel for the 5th respondent placed reliance on a decision of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . In the aforesaid case, the Supreme Court while dealing with the question of locus standi to invoke certiorari Jurisdiction, has observed thus:

"12. According to most English decisions. in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner " will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a "stranger, the court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: who is an "aggrieved person"." And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioners interest and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction."

17.7. Sri Mridul, learned Senior Counsel has also placed reliance on a decision of the House of Lords in *Inland Revenue Commr. v. National Federation of Self Employed and Small Businesses Ltd.* (1982) AC 617. That was a case in which the question that arose for consideration was as to whether the National Federation of Self-employed and Small Businesses Ltd. had sufficient interest in invoking the power of judicial review as contained in R.S.C. O.R.D. 53 Rule 3(5) was as follows:

"The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

Out of the 5 judges, 3 judges held that the National Federation of Self-employed and Small Businesses Ltd., had no sufficient interest so as to invoke judicial

review against the Inland Revenue Commissioner to direct him to assess and collect arrears of income tax said to be due by a number of people compendiously described as "fleet Street casuals. 2 judges held that the Federation had sufficient interest. But on the merits, their Lordships took the view that no case was made out for granting the relief. In that case, on the facts and circumstances and the law governing the revenue collection viz., Inland Revenue Regulation Act, 1890 and the Taxes Management Act, 1970, it was held that the Federation could not be considered to have sufficient interest so as to seek a direction to the Revenue Commissioner to assess and collect arrears of income tax from fleet street casuals.

17.8. It is not possible to hold that the aforesaid decisions which turn upon the facts and circumstances of the case and the provisions contained in the enactments concerned therein help the 5th respondent in this case.

17.9. In the instant case, as it is already pointed out that the Board has to discharge its onerous duties under the Bangalore Water Supply Act of ensuring sufficient supply of wholesome water to the residents of Bangalore Metropolitan area it is not the case of respondents I and 5 that as a result of raising a big township on the banks of Arkavathy river, no pollution of water flowing into the T.G. Halli Reservoir would take place. On the contrary, it is their case that such pollution can be avoided by adopting modern means. That being the position, in this case, not only the Board which is a statutory authority can very well be considered to be an "aggrieved Person" as it has sufficient interest in the proceeding and as such has locus standi to challenge the impugned orders. In the instant case, even any resident of Bangalore Metropolitan Area can challenge the impugned orders because it is he who is going to be affected by reason of pollution and depletion of water in the T.G. Halli Reservoir. Therefore, it is not possible to hold that the Board has no locus standi to maintain the writ petitions challenging the validity of the impugned orders Under Art. 226 of the Constitution of India.

18. Similarly, it is also the duty of the High Court to exercise its power of superintendence under Article 227 of the Constitution to ensure that the tribunals or authorities functioning within the territory over which its jurisdiction extends, do not exceed their limited jurisdiction and act well within their jurisdiction and exercise judicial power entrusted to them within the parameter of their authority. The power of superintendence under Article 227 of the Constitution is exercisable suo motu. Therefore, in the case of exercise of jurisdiction under Art. 227 of the Constitution, the question of locus standi does not assume much importance. What assumes importance in exercise of the power of superintendence is the extent of illegality resulting in exceeding of jurisdiction or absence of jurisdiction and the extent of the injury caused thereby. Normally where the decision is without jurisdiction, opposed to principles of natural justice, non-exercise of jurisdiction, grave dereliction of duty, flagrant violation of law etc. are some of the guiding factors for suo motu exercise of

jurisdiction under Article 227 of the Constitution.

For the reasons stated above, point No. 2 is answered in the affirmative.

Point Nos. 3 and 4:

19. These two points are inter-connected inasmuch as the Full Bench of the Tribunal has dismissed the appeals filed by the Board holding that no third party can prefer an appeal from the permission deemed to have been granted under sub-sec. (5) of S. 95 the Act and it is not necessary to entertain an appeal against express order granting permission under sub-sec. (2) of S. 95 of the Act inasmuch as such an order cannot be considered to cause an injury to a third person. Therefore, it is necessary to consider these two points together.

20. The reasons given by the tribunal for holding that the appeals are not maintainable and the Board cannot be considered to be an "aggrieved person" are reproduced in para 5 of this order. It is necessary to notice in this regard that S. 49 of the Act provides for an appeal from every original order passed under the Act or the Rules made thereunder. Under sub-sec. (c) of S. 49 of the Act, if the original order is passed by the Deputy Commissioner, an appeal lies to the Tribunal. The Act does not provide as to who can prefer an appeal. It only makes every original order passed by the Deputy Commissioner under the Act or the Rules made thereunder appealable to the Tribunal. Therefore, in the instant case, it cannot be disputed that an appeal lies against an order granting or refusing to grant permission under S. 95(2) of the Act.

21.1 Though the tribunal has referred to S. 49 of the Act in para 8 of its order, but it has failed to comprehend the effect of it. It has been carried away by the provisions contained in S. 53 of the Act which require production of a copy of the order appealed from along with the Memorandum of Appeal. In this regard, it has failed to notice that when the statute makes an order appealable, the provisions contained in S. 53 of the Act regarding production of a copy of the order appealed against cannot control or limit the scope of the provision providing for an appeal. As held by the Supreme Court in *State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another*, , a person who is not a party to a decree or order may, with the leave of the court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made *eo nomine* a party. Therefore in the instant case though the Act provides for an appeal against the permission granted or deemed to have been granted under Ss. 95(2) and 95 (5) of the Act, but nothing is provided as to who can prefer an appeal. Normally, a party to the proceeding who is bound by the order being a party to it will be entitled to prefer an appeal if he feels aggrieved by such order. In the case of a party or person who is not made a party to the proceeding but nevertheless if the order affects his interest, he can be considered to be at "aggrieved person and he can avail of the remedy of appeal with the leave of the court. Therefore, the question that arises for

consideration is whether the Board can be considered to be an "aggrieved person"?

21.2. The tribunal has held that the permission granted by the Deputy Commissioner under S, 95 of the Act does not by itself affect the interest of the Board; therefore, it cannot be considered to be an "aggrieved person". In this regard the tribunal has failed to bestow -its attention to the statutory duties which the Board is required to discharge in order to safeguard and advance public interest. The statutory duty to ensure adequate supply of wholesome water is a very serious and onerous duty. Any dereliction in the discharge of this duty is likely to result in pollution of water, and inadequate supply of water thereby affecting the health of and causing inconvenience to the residents of Bangalore Metropolitan Area and consequently endangering public health and interest. In order to discharge its statutory duty, the Board is required to maintain the catchment area of Arkavathy river and its river beds free from pollution of any kind. The township that is proposed to be raised on the banks of Arkavathy river is very close to T. G. Halli Reservoir. The case of the Board is that as a result of the establishment of township on the banks of river Arkavathy, there will be constant discharge of effusion and as a result thereof sewage mixes up with the water flowing into the Arkavathy river and thereby it pollutes the river water which flows into T.G. Halli Reservoir. It is also the case of the Board that by reason of drilling borewells in the area where the new township is planned to be raised, water in the T.G. Halli Reservoir is likely to be depleted because the borewells drilled in the area which is very close to T. G. Halli Reservoir, are likely to suck water from the Reservoir and thereby it will result in depletion of water in the reservoir and as such the Board will be very much adversely affected. Respondents 1 and 5 in each of these petitions have in their statement of objections at page 24 stated that the Karnataka Urban Water Supply and Drainage Board has also been approached to take up arrangement for provision of drinking water from borewells and for disposal of sewage and treatment of the effluents. The same thing is stated at para 5 in Annexure-4 produced by them which is a letter dt. 18/20-2-1982 written on behalf of respondents 1 and 5 to the Chairman of the Board. Thus it is clear that in the area in question, many borewells are intended to be drilled. As the area in question is very close to T.G. Halli reservoir, the borewells are likely to suck water from the Reservoir resulting in depletion of water in the reservoir. Therefore, apart from pollution of water, the very quantity of water in the reservoir will be reduced which will also directly affect the supply of water to the Bangalore Metropolitan Area. Consequently, the Board would be very much hard hit. Hence the Board is an "aggrieved person".

21.3. That several preventive measures may be taken and the likely pollution of water may be avoided or prevented are not matters to be taken into consideration for the purpose of determining whether the Board is an "aggrieved person" or not. At this stage, the relevant factors to be taken into consideration are whether on establishment of township on the banks of Arkavathy river, water

is likely to be polluted or not and whether there will be depletion of water in the reservoir. It is not the case of respondent-1 in each one of these petitions nor of the 5th respondent that there is no connection between the area where the township is proposed to be raised and the source of water supply to T. G. Halli reservoir. It is also not their case that there will be no pollution of water flowing into Arkavathy river which feeds T. G. Halli Reservoir. On the contrary, it is their case that it is possible to prevent such pollution and they are prepared to abide by the conditions which may be imposed in this regard. The Tribunal has missed the relevant factors in finding out whether the Board has sufficient interest in the matter and whether it is adversely affected and legal injury is caused to it by the grant of permission u/s 95 of the Act in order to determine whether it can be considered, to be an "aggrieved person". Whether the permission is granted by an express order or it is deemed to have been granted by operation of sub-sec. (5) of S. 95 of the Act, the effect of it is the same viz., conversion of agricultural lands for non-agricultural purposes. Therefore, it does not make any difference in determining whether the Board is an aggrieved person."

21.4. In the instant case, conversion of agricultural lands for non-agricultural purpose is for establishing a big township. The reasoning of the Tribunal that no third party can be considered to be an "aggrieved person" either as against the express order of permission or deemed permission is ex facie erroneous. This the Tribunal has stated as a general proposition of law. Apart from the facts and circumstances of the case on hand in which the interest of the Board cannot at all be denied to have been affected for the reasons hereto mentioned, it is not possible to state it as a general proposition of law that no third party can be held to have been aggrieved against the order granting permission or even when the permission is deemed to have been granted to convert agricultural land for non-agricultural purpose. It is not possible to envisage the situation as to how the conversion of agricultural land into non-agricultural purpose can be held not to affect anyone under any circumstances. It all depends upon the facts and circumstances of each case.

21.5. Similarly an appeal lies against the permission deemed to have been granted by reason of operation of sub-sec. (5) of S. 95 of the Act. The reasoning of the tribunal is that under S. 53 of the Act every appeal is required to be accompanied by a certified copy of the order appealed from unless the production of such copy is dispensed with by the appellate authority; therefore, no appeal lies against the permission deemed to have been granted under subsection (5) of Section 95 of the Act as in such a case there would be no order, therefore, no copy of the order can be furnished along with the appeal memo, hence no appeal lies against such permission. There is also another reasoning of the tribunal that since the deemed permission is made by operation of law, viz., as a result of the provisions contained in sub-sec. (5) of S. 95 of the Act, no appeal lies against such deemed permission. It is not possible to sustain these reasons. Even in a case where permission is deemed to have been granted by reason of operation of the provisions of law, in the eye of law, there will be an

order granting permission to convert agricultural land for non-agricultural purposes. If there is no such order, the further implementation of the same becomes impossible. Further, S. 49 of the Act cannot be read subject to S. 53 of the Act. Therefore it has to be held that an appeal lies against an order granting permission by an express order as well as against the permission which is deemed to have been granted by reason of satisfaction of the conditions contained in sub-sec. (5) of S. 95 of the Act.

21.6. Having regard to the wordings contained in S. 49 of the Act, whether a person or party preferring an appeal against the aforesaid order is or is not entitled to maintain the appeal is a different question and it has no bearing on the question whether an appeal lies against the aforesaid order. When the statute does not prescribe as to who can prefer an appeal against the order which is appealable, it is normally the person aggrieved who is entitled to maintain an appeal.

22. I will now consider the decisions relied upon by both the sides on the question as to who can, in law, be considered to be an "aggrieved person".

22.1. In the case of *Eating Borough Council v. Jones* (1959) 1 All ER 286 (Queen's Bench Division), two questions arose for consideration : (1) whether the words "any person" occurring in sub-sec. (5) of S. 23 of the Town and Country Planning Act, 1947 covered Local Planning Authority; and (2) whether assuming that they were capable of including the Local Planning Authority, the words "any person aggrieved" covered the case of Local Planning Authority whose enforcement notice had been quashed on the ground that for the alleged development no permission was required. It was held that the "person aggrieved" was not one who felt annoyed because what was thought to be a breach of planning control turned out not to be a breach of planning control and equally, the mere fact that the local authority charged with certain duties under the Town and Country Planning Act, 1947 had been frustrated in the performance of what it thought was its public duty, were not enough of themselves to make the local planning authority an aggrieved person. It was also held that no legal burden was cast on the local Planning Authority as no costs were awarded. Thus it is clear that the decision in this case turned on the facts and circumstances of the case and it was found that no legal injury had been caused and no legal burden had been cast on the local Planning Authority. Therefore, it was held that the local Planning Authority could not be considered to be an "aggrieved person". Hence it was further held that the Appeal Committee of Middlesex Sessions were wrong in law in holding that the appeal was maintainable and allowing it.

22.2. Thus the principle that is deducible from this decision is that the mere annoyance in the absence of any legal injury caused or legal burden cast on the party preferring an appeal cannot be considered to be a person aggrieved".

22.3. *Buxton v. Minister of Housing* (1960) 3 All ER 408 (Queen's Bench Division) also related to a case which arose out of Town and Country Planning

Act, 1947. In that case one H. Ltd., applied to the local Planning Authority for permission to develop land by excavating and processing chalk. Planning permission was refused. Then H. Ltd., appealed against the refusal under S. 16 of the Town and Country Planning Act, 1947 to the Minister for Housing and Local Government who, after causing an enquiry to be held and on receipt of the report on the enquiry, allowed the appeal. Four owners of the adjoining lands applied to the High Court u/s 31 of the said Act to quash the decision of the Minister. The question that arose for consideration was whether those 4 land owners could be considered as aggrieved persons" within the meaning of Section 31 of the Town and Country Planning Act, 1959. On the facts and circumstances of the case it was held that the adjoining land Owners were not persons aggrieved" within the meaning of Section 31 of the said Act because the order of the Minister allowing the appeal in granting permission did not infringe any legal right of theirs inasmuch as no common law rights were infringed and as individuals they had no statutory right under the Town and Country Planning Acts, 1947 and 1959 so as to have their representations considered by the Minister. Thus this decision also goes to indicate that it is the infringement of legal right that makes a person aggrieved so as to maintain an appeal.

22.4. In *Minakshi Naidu v. Subramanya Sastri* (1887) 14 Ind App 160, the Judicial Committee considered the question of jurisdiction of the High Court to entertain an appeal from the order of the District Judge. In that case under S. 10 of Act No. 20/1863, entitled "An Act to enable the Government to divest itself of the management of religious endowments" and commonly known as Pagoda Act, the District Judge appointed the appellant to fill the vacancy in the Committee. The order of the District Judge was challenged before the High Court in the appeal which was allowed and the order of the District Judge was set aside. On the construction of the relevant provisions contained in the Pagoda Act, it was held that there was no civil suit respecting the appellant and it would be impossible to bring the order made by the District Judge pursuant to S. 10 of the Pagoda Act within the definition of a "decree" as contained in the Civil P.C. and there was no other general law which was relied upon to give a right of appeal. Therefore, no appeal could have been maintained against the order passed by the District Judge under S. 10 of the Pagoda Act. Accordingly, the appeal was allowed and the order of the High Court was discharged and the appeal preferred before the High Court was dismissed. Thus it is clear that this decision is of no assistance in the instant case to respondents I and 5 who have placed reliance on this decision.

22.5. In *Nookala Setharamaiah Vs. Kotaiah Naidu and Others*, the question as to whether a person who is not made a party to the writ petition can seek redress in a superior court against the order passed by the High Court in the writ petition is considered. It has been held that it is settled by a course of authorities that a person who has not been made a party to the proceedings may still file an appeal with the leave of the appellate court provided he might have been properly made a party to the proceeding. In this very decision, the following principles of law

stated in *In. Re: Securities Insurance Co. (1894) 2 Ch. 410*, by Lindley, L.J. have been approved:

"I understand the practice to be perfectly well settled that a person who is a party can appeal (of course within the proper time) without any leave, and that a person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it cannot appeal without leave. It does not require much to obtain leave. If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he should have leave he will get it; but without leave he is not entitled to appeal."

It has also been further held that these principles of law have been accepted by the High Courts in India.

22.6. In the instant case, it has already been pointed out that the Board is prejudicially affected by the permission granted by the Deputy Commissioner u/s 95 of the Act inasmuch as discharging of its statutory duty to supply adequate wholesome water to the Bangalore Metropolitan Area is adversely affected. The Board, in the instant case, cannot be considered to be a person "not affected" by the orders of the Deputy Commissioner.

22.7. In *Shivaraya v. Siddamma*. AIR 1963 Mys 127 while considering the question as to whether a person who is not a party to the proceeding can prefer an appeal, it is held that leave to a person to appeal from a decree or order in a proceeding to which he is not a party shall not ordinarily be granted unless he establishes that he has an interest which is affected by the order or decree from which he proposes to appeal. It is also further held that the question as to whether leave should or should not be granted depends upon the facts of each case and it is for the appellate court to decide whether the case before it is a fit one for the grant of such leave. This decision is approved in *The State of Punjab v. Amarsingh*, AIR 1974 SC 904 at para 84.

22.8. In *Maharaj Singh Vs. State of Uttar Pradesh and Others*, , the question that arose for consideration was as to whether the State which was not a party to the suit could maintain an appeal under S. 96, C.P.C. It was held that where a wrong against community interest was done, "no locus standi" will not always be a plea to non-suit an interested body chasing the wrong-doer in court. The Government was held to be a "person aggrieved" as it had a right of resumption front the Gaon Sabha meant to be exercised in public interest and its right of resumption, would be seriously jeopardised if the estate were to slip into the hands of the trespasser is as much as the estate belonged to the State it was vested in Goan Sabha by the State for community benefit. In this decision while considering the question as to who can be considered to be an "aggrieved person" it is held that a person who has a proprietary right which has been or is threatened to be violated is highly aggrieved person. It is also further held that a legal injury creates a remedial right in the injured person and the nexus between the lis and the plaintiff need not necessarily be personal although it has to be more than a

wayfarer's allergy to an unpalatable episode. In this decision, the wider proposition of law as to who is a "person aggrieved" made by the Supreme Court in *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, has been approved. In *Dabholkar's* case, it is held by the Supreme Court that "the test is whether the words "person aggrieved" include a person who has a genuine grievance because an order has been made which prejudicially affects his interests." In that case, the Supreme Court has also further approved the following enunciation made by Lord Denning in *Att. Gen. of Gambia v. Peirra Serr N'Jie* (1961) AC 617:

"..... The words "person aggrieved" are of wide import and should not be subjected to a restrictive interpretation. They do not include of course, a mere busybody who is interfering in things which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

In the instant case, the Board has a genuine grievance. The necessary facts indicating genuine grievance of the Board have already been referred to in the earlier portion of this order. The Board which is a statutory Body having genuine grievance cannot also be considered to be a "busybody trying to interfere with the things which do not concern

22.8A. In *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, , the question as to whether the Advocate General could be considered as an "aggrieved person" for the purpose of sub-sec. (1) of S. 37 of the Advocates Act, 1961 to maintain an appeal against the order of the disciplinary authority was considered. It was held that the Advocate General could not be considered to be a "person aggrieved" and the decision of the disciplinary authority could not necessarily be said to raise a point of public interest merely because the Advocate General felt that it was erroneous or that he himself would have arrived at a different conclusion. It was also further held that an "Advocate General in India was not the guardian-angel of the Bar nor was he the champion of public interest in any matters save as specified in a statute. Thus the decision in *Adi Pherozshah's* case is confined to the facts of that case and it will not have a bearing on the question as to whether in a case where public interest is involved who can be considered to be an aggrieved person". This fact is clear from the majority view expressed at para 64 of the judgment which is as follows:

"A decision by the disciplinary Committee cannot necessarily be said to raise a point of public interest merely because the Advocate General feels that it is erroneous or that he himself would have arrived at a different conclusion. That, at best, is his personal opinion as regards the conduct of an advocate who has to deal with the public and the non acceptance thereof does not make him a person aggrieved. An Advocate-General in India is not the guardian angel of the Bar, nor is he the champion of public interest in any matter save as specified in a statute."

Therefore, this decision is not of any assistance to respondents 1 and 5.

22.9. In *Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd.*, it is held that "it is well-settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate court and such leave should be granted if he would be prejudicially affected by the judgment."

22.10 Sri Mridul, learned Senior Counsel also placed reliance on the following passage from the treatise on Administrative Law Fifth Edition by H.W.R. Wade at page 171 under the Heading "Appeals and Judicial" Review :

"No one has any right of appeal against the grant of planning permission. The theory of planning control is that the only parties concerned are the applicant and authority, and that permission legitimates what the owner was previously liberty to do on his land in, any case. The permission in no way entitles him to infringe the legal rights of others, so as to obstruct their light or operating an industry which is a nuisance."

22.11. The propositions contained in the aforesaid quotation are not applicable to the facts of the present case. As it is already pointed out, S. 49 of the Act provides for an appeal against the original order passed by the Deputy Commissioner under the Act and the Rules framed thereunder. Further whether the person preferring an appeal can be considered to be an "aggrieved person" depends upon the facts and circumstances of each case. As far as the facts and circumstances of the case, on hand are concerned, it has already pointed out been that the Board has been prejudicially affected. The legal rights of the Board are also infringed inasmuch as the pollution of Arkavathy water leads to pollution of water in T.G. Halli Reservoir which in turn affects the board in discharging its statutory duty of ensuring supply of wholesome water to Bangalore Metropolitan Area. Therefore, the aforesaid passage is not of any assistance to respondents 1 and 5 in the instant case.

22.12. In *Sureshchandra v. State of Mysore* (1969) 2 Mys LJ 112 the question of right of appeal against the order granting or refusing to grant permission under S. 95 of the Act and as to who could prefer an appeal were not considered. The only question that was considered was as to whether any condition could be imposed subsequently by the Deputy Commissioner after the permission was granted or was deemed to have been granted under sub-secs. (2) and (5) of S. 95 of the Act. Therefore, this decision is not relevant to the question involved in the case on hand.

22.13. In *W.P.No.455/71* decided on 11-10-1973, (*K. Narayana Setty v. Deputy commr. Bangalore* reported in (1974) 1 Kar LJ 25 item No. 87, the question as to who can prefer an appeal against the order of granting a permission u/s 95 of the Act has not been considered. The question on that is considered in that case is as to when the permission is deemed to have been granted under sub-section (5) of S. 95 of the Act, with which we are not concerned. In the said decision, while dealing with the right of appeal it is held thus:

There is no substance in this contention. The petitioners could have preferred an appeal only if there was an order refusing permission for conversion and it was intimated to them within the period of four months. It was unnecessary to prefer an appeal from an order which was not affecting their rights. The order communicated after the period of four months did not prejudicially affect their rights. On the contrary, the law operates in their favour declaring that the permission applied for shall be deemed to have been granted them."

The aforesaid observations are also not any assistance of decide the question on hand.

22.14. The decision in *B. S. Irannavar v. State of Mysore* (W. P.No. 2131 / 71 D. D. 7-11-73) reported in (1974) 1 Kar LJ 67 item No. 230, does not deal with the question as to who can prefer an appeal against the order under S. 95 of the Act. So also the decision in the *State of Mysore v. Mysore Revenue Appellate Tribunal*, (W.P.No.3436/73 D. D 23-11-1973) Reported in (1974) 1 Kar LJ 67, item No. 231 is not on the point.

23. In the light of the aforesaid discussion, and in view of the fact that the Board is adversely affected by reason of grant of permission under S. 95 of the Act, it is an "aggrieved person". Therefore, it is entitled to maintain an appeal u/s 49 of the Act against the permission granted or deemed to have been granted under Sub- secs. (2) and (5) respectively of S. 95 of the Act . Point No. 3 is answered accordingly in the affirmative.

24.1. The finding on point No.3 is sufficient to hold that the order of the Tribunal produced as Annexure-A is not valid in law. However, having regard to the several observations contained in the order of the Tribunal, it is necessary to point out that those observations are not correct and valid in law in order to see that the Tribunal does not pursue such views in future.

24.2. In para 11 of the order, the tribunal has held that the Deputy Commissioner is not required to hold a detailed enquiry examining the persons likely to be affected by an order of conversion because sub-sec (5) of S. 95 of the Act provides that the permission is deemed to have been granted if no decision is communicated to the applicant by the Deputy Commissioner within a period of 4 months from the date of receipt of the application. Sub-sec. (2) of S. 95 of the Act provides that the Deputy Commissioner may, subject to the provisions of S. 95 and the Rules made under the Act refuse permission or grant it on such conditions as he may deem fit. Sub-sec. (3) provides as to when the permission sought for under sub-sec (2) can be refused. Sub-section (4) provides for imposition of conditions and the nature thereof. These statutory obligations cannot, at all be discharged in accordance with law, without holding an enquiry and without hearing the applicant and the persons who are likely to be affected by the grant of such permission. It is not necessary to indicate the details of the enquiry as it depends upon the facts and circumstances of each case, but it is sufficient to hold that an enquiry is necessary. The Deputy

commissioner cannot grant or refuse to grant the permission without holding an enquiry.

24.3. The Tribunal also proceeds on the assumption, as it is apparent from para 14 of its order, that the permission granted u/s 95 of the Act does not ipso, facto give licence to the persons to commit nuisance in as much as the permission - express or deemed - cannot be pressed into service for, protecting oneself against actions for nuisance or other wrong. Therefore, a third party cannot be held to have been affected by such, permission. The tribunal has failed to see that if the grant of permission is likely to lead to invasion of the rights of the third parties or at any rate it is going to provide a basis for infringing those rights, the statutory authority empowered to grant such permission should not exercise its power and grant permission. When the Act requires the authority to exercise power keeping in view the interests of the general public and not to grant permission if such permission is likely to cause public nuisance it must bestow its thought, over the consequences that may ensue as a result of granting permission, in the light of the statutory requirements, and take care to, see that if the consequences of its act i.e., grant of permission is likely to lead to undesirable situation or likely to become a basis for causing injury to third persons and the interests of general public are going to suffer and it is going to cause nuisance public, it should not grant permission; in such a case. The power conferred upon the Deputy, Commissioner under S. 95(2), (3) and (4) of the Act has to be exercised judicially. It is not an administrative power. It has to be exercised not only with reference to the rights and interests of the applicant seeking permission, but also with reference to the interests of general public which includes the interest of third parties and at the same time it must also be kept in view that grant of permission does not cause nuisance to public. Of course, it does not require to be stated that the interests of general public and avoidance of nuisance to public will always prevail over the rights and interests of the applicant. This the tribunal has failed to bear in mind. This is apparent from the observation of the tribunal in para 15 of its order that the discretion is conferred without a duty cast on the Deputy Commissioner to protect the interest of the public, therefore it cannot be called in question by a third party. by filing an appeal: and the matter is between the Deputy, Commissioner and the applicant and the third party need not take the trouble of filing an appeal and it can seek remedy in a court only: when a special injury is caused. These observations of the tribunal are based on the misreading of Sec. 95 of the Act. It is already pointed out that sub-secs. (3) and (4) of S. 95 of the Act do cast a duty on the Deputy Commissioner to safeguard the interests, of the general public.

24.4. The observations contained paras 22 to 23 looked into the matter only superficially. There is no notification for the tribunal to hold that the Board, for some reason or the other, has entertained fears without reasonable grounds and it would be indeed unnecessary to prevent building activities only because there is some remote possibility of the source of water being polluted by the effluent

that may escape into the river. It is also further held by the tribunal that the permission for conversion does not proprio vigore affect the right of third parties. It is already pointed out that whether the permission granted under S. 95 of the Act affects the rights and interests of third parties depends upon the facts and circumstances of each case in the instant case it is not even the case of respondents 1 and 5 that the water in Arkavathy river is not going to be polluted. Thus the reasons given by the Tribunal do not stand to judicial scrutiny. As such, the order cannot be held to be valid even on merits. For the reasons stated above, point No. 4 is answered in the negative.

Point No. 5:

25. The order dt. 27-3-1982 produced as Annexure-Y in W.P.No. 19919 to 19954/82 and as Annexure-A in W.P.21172 to 21177/1982 is passed, by the Deputy Commissioner following the order of the Tribunal dated 13-8-1981 produced as Annexure-A in W.P. No. 19919 to 19954/82 which is held as invalid while recording the finding on point No. 4. The remaining orders produced as Annexures-B to X" some of them are passed prior to the impugned order of the tribunal and some are passed subsequent thereto. Certain conditions are imposed on the applicants to comply with the provisions contained in the Karnataka Town and Country Planning Act, 1961 and also to comply with the requirements of other laws like the Karnataka Land revenue Act and the Water (Prevention and Control of Pollution) Act, 1974 etc. It has already been held that the grant of permission to convert vast extent of agricultural lands on the banks of Arkavathy river for the purpose of raising a big township adversely affects the legal rights of the Board and causes great prejudice to it in the discharge of its statutory duties.

26.1. In addition to this, the important question that arises for consideration in this case is, whether the provisions of S. 95 of the Act can straightway be invoked for establishing a new township which carries with it several legal obligations on the State including a financial burden, without there being a prior decision of the State Government as to the place of location of the new township. In this connection the provisions contained in The Karnataka Town, and Country Planning Act, 1961 (hereinafter referred to as the "Planning Act") and the Karnataka Land Revenue Act are relevant to be noticed. The Planning Act is intended to provide for the regulation of planned growth of land use and development and for the making and execution of town planning, schemes in the State of Karnataka. It is intended to stop uncontrolled development of land due to land-speculation and profiteering in land. It is also intended to create conditions favourable for planning and preplanning of the urban rural areas in the State of Karnataka with a view to provide full civic and social amenities for the people in the State. The other-objects stated in the preamble are not necessary for our purpose.

26.2. As per the definition of the expression "land use" contained in sub-sec. (3) of S. 2 of the Planning Act, means the major use to which a plot of land is being

used on any specified date. The expression "Planning Area" is also defined to mean any area declared to be local planning area under the Planning Act. Section 4A provides for declaration of local planning areas, their amalgamation, sub-division, inclusion of any area in a local planning area. Sub-section (1) thereof provides that the State Government may by notification declare any area in the State to be a planning area for the purpose of the Act and on such declaration, the Act shall apply to such area. Sub-sec. (2) thereof, further provides that every such notification shall define the limits of the area to which it relates. Sub-sec. (3) thereof provides for amalgamation of two or more planning areas into one local planning area and to sub-divide a local planning area into different local planning areas and to include such divided areas in other local planning areas. Sub sections (4) and (5) are not relevant for our purpose. Section 5 of the Planning Act provides that the State Government shall, by notification specify the date with reference to which the present land use of any land in the State has to be determined and different dates may be fixed for different areas in the State. Section 6 provides for preparation of a map showing the present land use. Chapter III provides for preparation of outline development plan which applies not only to the existing areas but also to the areas where new townships are to be raised. After the publication of the outline development plan, a comprehensive development plan is required to be prepared as per Chapter IV of the Planning Act, which covers establishment of a new township.

26.3-4 Chapter XIII of Karnataka Land Revenue Act, 1964 provides for survey and settlement of lands and of boundary disputes within the sites of villages and the limits of towns and cities. Section 148(1) of the Act which falls, under Chapter XIII of the Act, provides that the Deputy Commissioner or a Survey Officer when directed by a Notification by the State Government may determine what lands are included within the sites of any village, town or city and fix and from time to time, vary the limits of the same respect being had to all subsisting rights of land-holders. After such notification, as per sub-sec. (2) thereof, the Deputy Commissioner or the Survey Officer acting under sub-sec. (1) has to set apart for building sites within the limits of any village, town or city fixed under sub-sec. (1) thereof and any lands which may be the property of the State and not in the lawful occupation of any person or aggregate of persons, provided that no land hitherto used for purposes of agriculture only shall be set apart for building sites except Government. Sub-section (3) further provides that the land already set apart for building sites within the limits of any village, town or city, in accordance with law for the time being in force, prior to the commencement of the Act, shall be deemed to have been so set apart u/s 148 of the Act. Section 148 of the Act applies not only to an existing village or town or city but it also applies for establishing a new village, township or city as the case may be and it has to be complied with for raising a new township.

27. A reading of the aforesaid provisions contained in the Planning Act and the Act (Karnataka Land Revenue Act, 1964) leads to an inevitable conclusion that for the change in the land use for the purpose of establishing a new village or a

township or city as the case maybe, the State Government must first take a decision as to whether a new village or a township or a city should be raised in a particular area. If it decides that in a particular area a new village or township or city, as the case may be, be raised, it has to issue a notification declaring that area to be a local planning area for the purpose of the Planning Act and thereafter further steps in accordance with the provisions of the Planning Act are to be taken. The State Government is also required to issue a notification under sub-sec (1) of S. 148 of the Act determining the lands which are to be included within the site of any village, town or city as the case may be and fix the boundaries thereof.

28. It is only on complying with these provisions, the permission for conversion of agricultural lands for non-agricultural use under S. 95 of the Act can be sought and obtained in the case of establishment of a new township. Sec. 95 of the Act is not intended to be straightway invoked for establishment of a new village or a township or a city as the case may be, without first complying with the requirements of the aforesaid two enactments. In such an event, a body of individuals on obtaining permission under S. 95 of the Act, will be forcing a decision on the State Government to raise a village or township or city as the case maybe in the area selected by them (which may or may not be suitable from all points of view) and thereby circumventing the provisions 1 contained in the Planning Act and Chapter XIII of the Act. It is not a case of extension of a village or a town or conversion of an agricultural land for non-agricultural use adjoining to an existing village or town. It is a case where a large tract of agricultural land is being used for raising a new township. This is a matter which lies within the exclusive decision of the State Government. It is the State Government which has to decide and select the area for location of a new village, township or city its the case may be.

29. In the instant case, the State Government has not taken any such decision. The records produced in the case do not disclose that the State Government has taken a decision to establish a new township on the agricultural lands in question. However, in the order dated 27th March 1982 (Annexure-Y), the Deputy Commissioner has referred to the letter No. R.D 187 LGB 81 dt. 13-11-1981 issued by the Revenue Commissioner and, Secretary to Government, Revenue Department addressed to the Deputy Commissioner, Bangalore. That letter as stated by the Deputy Commissioner himself in para 4 of his order (Annexure-F) has only intimated him to take action in accordance with the judgment of the tribunal dt. 13-8-1 1981 (produced as Annexure-A). Therefore, that letter cannot be construed to be a notification issued u/s 148 of the Act and also a Notification issued u/s 4A of the Planning Act. Further, it is I also not stated that it contains a decision of the State Government to raise a new township in the area in question. Thus the preliminary requirement for the purpose of establishing a new township as required by the provisions contained in the Planning Act and Section 148 of the Act are not complied with. In the absence of this, the provisions contained in Section 95 of the Act for converting

agricultural lands for non-agricultural purpose for establishing a new township cannot be invoked.

30. In addition to this, the order of the Deputy Commissioner produced as Annexure-Y is mainly based upon the order of the Tribunal which is held to be invalid. Other orders (Annexures-B to X) are passed without holding an enquiry and without affording an opportunity to the Board. As such, those orders are unsustainable. For the reasons stated above, point No. 5 is answered in the negative.

31. Sri Mridul, learned Senior Counsel appearing for respondent-5 submitted that this is a case in which respondents 1 and 5 are prepared to abide by any condition that may be imposed in order to safeguard the interest of, the Board and protect the water in T. G. Halli Reservoir from being polluted and they have given an undertaking in writing and the Planning Authority as well as the Pollution Control Board have also given their no objection. Hence it is not a case for exercising jurisdiction either under Art 226 or under Art. 227 of the Constitution. The learned counsel has placed reliance on two decisions of the High Court of Bombay. In *The State of Bombay Vs. Morarji Cooverji*, it is held as follows :

"It is not sufficient that a party should come to this court and make out a case that a particular requisition order is not valid. In order to get that relief from the court on a writ petition not only must he come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the court that making of the order will do justice and that justice lies on his side."

In *Paygonda Survgonda Patil and Others Vs. Jingonda Surgonda Patil and Others*, is further held as follows :

"Mr. Rane argued that since we have found that the Commissioner failed to exercise the jurisdiction vested in him by law when he dismissed the petitioners' appeal, we ought to set aside the Commissioner's order and direct that the appeal filed by the petitioners should be reordered. We are, however, not bound to do so. Interference by the Court under Arts. 220 and 227 of the Constitution is discretionary and it is the settled practice, of this court not to interfere under these provisions unless it is necessary to do so in the interest of justice. In the present case the interest of justice requires that we should not interfere with the order of the Commissioner, however wrong in law that order may be. The petition therefore is dismissed. Under the circumstances, there will be no order as to costs of this petition."

32. Suffice it to say that there cannot be any dispute about the proposition of law laid down in the aforesaid two decisions for exercise of jurisdiction under Arts. 226 and 227 of the Constitution. But the facts and circumstances of this case which have already been adverted to, in detail, are not such so as to disentitle the Board to seek relief under Arts. 226 and 227 of the Constitution of India, The

Board is not guilty of any such acts which disentitle it to claim the relief in these petitions. The Board is a public utility organisation. It is only trying to vindicate that establishment of a new township will affect the supply of wholesome water to Bangalore Metropolitan Area and thereby it affects the Board legally and factually in discharging its statutory duties. This is a case in which great public interest is involved inasmuch as the health of metropolis of Bangalore Metropolitan Area will be in danger as on the establishment of a new township on the banks of Arkavathy river the water flown into T.G. Haiti Reservoir is likely to be polluted. Hence I am of the view that this is a case in which interference is called for and refusal to exercise jurisdiction under Articles 226 and 227 of the Constitution in a case like this will be nothing but failing to discharge the constitutional obligation which this court cannot afford to do.

33. Even though the Tribunal has not decided the appeals on merits as it has dismissed the appeals on the grounds that no appeal lies and the Board is not entitled to maintain the appeals, nevertheless it is not necessary to remit the appeals for decision to the Tribunal in view of the conclusion reached by me that for raising a new township, the State Government has to first take a decision as to where a new township has to be raised and issue notifications as per the provisions of the planning Act and Section 148 of the Karnataka Land Revenue Act, 1964.

34. No other point survives for consideration.

35. For the reasons stated above, these writ petitions are allowed.

a) The impugned order of the Tribunal bearing Appeal Nos. 3 to 6 of 1980 and 12 to 40, 42 and 43 of 1981 dt. 13-8-1981 produced as Annexure-A in W.P. Nos. 19919 to 19954/1982 is hereby quashed;

b) The order dated 27-3-1982 in Case No. ALN.SR.223, 224, 225, 227 and 235/7879 and A.L.N. SR.1 to 7, 39, 40, 41, 56, 81 and 82/79-80 passed by the Deputy Commissioner, Bangalore produced as Annexure-Y in W.P. Nos. 19919 to 19954/1982 and as Annexure-A in W.P. Nos. 21172 to 21177 of 1982 is hereby quashed;

c) The orders of the Deputy Commissioner produced as Annexure-B to X" in W.P. Nos. 19919 to 19954 of 1982 are also hereby quashed.

36. Having regard to the facts and circumstances of the case, there will be no order as to costs.

37. Petitions allowed.