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C.A.No. 1474-1476 OF 1998

ITEM No.101

Court No. 10

SECTION IVA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Civil Appeal No.1474-1476/1998

M.E.I.Emp. Housse Building Coop. Society & Ors. Appellant (s)

vs.

State of Karnataka & Ors.

Respondent (s)

(With Office Report)

WITH

C.A.No. 4548-4549/1998(With office report)

SLP(C) No. 12153/2000 (With Appl.(s) for c/delay in filing SLP and with Office Report)

C.A.No. 5190/2002 (With Office Report)

Date:27/4/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)

Mr. R.S. Hegde,Adv.

Mr. Chandra Prakash,Adv.

Ms. Savithri Pandey,Adv.

Mr. P. Devesh,Adv.

Mr. P.P. Singh,Adv.

For Respondent (s)

Mr. Kavin Gulati,Adv.

Mr. Sanjay R. Hegde,Adv.

Mr. Anil K. Mishra,Adv.

Mr. Girish Anantha Murthy,Adv.

Mr. B.V. Deepak,Adv.

UPON hearing counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeals are allowed in terms of the signed order

(Sarojbala)(Om Prakash Nagpal)

PA to Addl.Registrar

Court Master

(The signed order

is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1474-1476 OF 1998

M.E.I. Emp. House Building Coop Society & Ors. Appellant(s)

Vs.

State of Karnataka & Ors.

Respondent(s)

O R D E R

Delay condoned.

Leave granted.

In all the petitions in the bunch, the factual position is that the land was acquired by the State government for the purposes of construction of houses, on a request made to that effect by the Cooperative Housing Societies, who are appellants before us in different appeals. There is no dispute about the fact that essentially the land which has been acquired was being used for agricultural purposes. The Cooperative Housing Societies seem to have entered into agreement with the State government, agreeing to pay all the amount and charges as may be required for the purpose.

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The Land Acquisition Officer required the Housing Societies to deposit conversion fine, i.e., for change of use of land from agricultural to any other purpose. The appellants initially made some payments on that account but in view of a later decision of the High Court reported in A.L.R. 1988 (9) Karnataka 1398 [Special Deputy Commissioner vs. Naranappa] they filed writ petitions challenging the demand on account of conversion fine and further for refund of the amount already paid in pursuance of the demand raised. It appears that the plea raised was that on a declaration made under Section 14 of the Karnataka Town & Country Planning Act, 1961 indicating intention to prepare an outline of the development plan resulting in change in use of the land, the provisions of the Karnataka Land Revenue Act would not be applicable in respect of that area. We find that this contention found favour with the learned Single Judge, however, in the meantime an amendment was made in sub-Section (2) of Section 95 of Karnataka Land Revenue Act with retrospective effect by virtue of which notwithstanding any other law for the time being in force, the provision of sub-Section (2) of Section 95 would be attracted. This amendment was brought about by Act

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No. 2 of 1991 w.e.f. 15.1.1965. The effect of the aforesaid amendment was considered later by a Division Bench of Karnataka High Court and it repelled the submission as raised on behalf of the petitioners.

However, in one of the appeals before us filed by the Rajajinagar Housing Co-Operative Society Ltd. & Anr, it has been pointed out that in the writ petition some other points were also raised including the one that the provisions of sub-Section (2) and sub-Section (7) of Section 95 would not be attracted, since the petitioners' housing society had not at any point of time applied for permission of the Deputy Commissioner, for change of the land use. It is submitted that though this point was contested in the High Court even at the appellate stage too but it has not been dealt with at all. We have perused the writ petition which was filed in the Karnataka High Court. We find such a plea having its foundation in the averments made in Paragraph 12 of the petition. The learned counsel appearing in the other appeals also submits that such arguments were raised in other appeals also but they did not find favour to be mentioned in the order passed by the Appellate Court. In a nut shell, the contention as raised on behalf of the appellants is that the

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question of realising conversion fine from the appellants does not arise in the teeth of the provisions as contained in Section 95 of the Act itself. We feel that this argument needs to be examined at least prima facie whether it has any substance or not. Section 95 of the Karnataka Land Revenue Act, 1964 reads as under :

"(2) If any occupant of land assessed or held for the purpose of agriculture wishes to divert such land or any part thereof to any other purpose, he shall [notwithstanding anything contained in any law for the time being in force] apply for permission to the Deputy Commissioner who may, subject to the provisions of this section and the rules made under this Act, refuse permission or grant it on such conditions as he may think fit.

[Provided that the Deputy Commissioner shall not refuse permission for diversion of such land included in the Outline Development Plan or the Comprehensive Development Plan published under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963), if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan :]

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[Provided]

(3) Permission to divert may be refused by the Deputy Commissioner on the ground [that the diversion is likely to defeat the provisions of any law for the time being in force or that it is likely to cause a public nuisance] or that it is not in the interests of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under sub-Section (4).

(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.

(6) Unless the Deputy Commissioner shall, in any particular instance otherwise direct, no application under sub-Section (2) shall be recognised unless it is made by the occupants.

(emphasis provided)

(7) When any land assessed or held for the purpose of agriculture is permitted under sub-Section (2) [or is diverted under the [provisos] to the said sub-Section or is deemed to have been permitted under sub-Section (5) or sub-Section (6-A), to be used for any purpose unconnected with agriculture, the Deputy Commissioner may, subject to such rules as may be made by the State Government in this behalf, require the payment of a fine. No assessment shall be leviable on such land thereafter except under sub-Section (2) of Section 83."

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A perusal of the above noted provision, i.e., Section 95 of the Act shows that if user of the land from agriculture to any other purpose is involved and if the occupant of the land holding it for the purpose of agriculture wishes to divert such land for any other purpose, shall apply to the Deputy Commissioner for such permission to change land use. The Deputy Commissioner is entitled to accept or refuse the permission or in case permission is granted, to put a condition for such permission. Sub-Section (7) of Section 95 provides for payment of fine on account of change in use of land from agriculture to other purpose.

The learned counsel for the Respondent has vehemently urged that the land has been acquired by the State Government at the instance of the appellant which necessarily involves change in use of the land from agriculture to any other purpose. That being the position, the beneficiaries of the change in the land use shall have to bear the burden of fine on that account. However, we find that sub-Section (7) provides for fine on account of change in use where permission is granted of sub-section (2) of Section 95. In sub-Section (2) the application is to be made by an occupant of land assessed for holding the land

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for the agricultural purpose the expression further used in sub-Section (2) is that if "pers

on wishes to divert" such land or any part thereof for any other purpose, it is thus clearly a voluntary act of the occupant for change of the land use for any other purpose when he applies for the same and would thus be liable for fine under sub-section (7) of Section 95. In this connection it would also be relevant to peruse definition of the word 'occupant' as contained in sub-Section (20) of Section 2. It reads as under :

"(20) "Occupant" means a holder in actual possession of unalienated land other than the tenant"

That is to say before the land changes hand, that would be the relevant point of time regarding the occupation of the land and not thereafter. Therefore, if at all the appellants, it is submitted, would be occupants after the alienation and not occupant of unalienated land. The application as envisaged is made under sub-Section (2) of Section 95 by the occupant who wishes for change in the land use. It is submitted that in the

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In the present case the position is entirely different where the State Government itself has acquired the land for the purpose of Housing Schemes, though may be on the request of the appellants but the appellants cannot be termed as occupants nor they have moved any such application for change of land use as envisaged under sub-Section (2) of Section 95. Therefore, the question of imposition of any condition imposing time for change of land use arises. We find that the submission made and noted above cannot be brushed aside as totally devoid of any merit. It deserves to be considered by the High Court. We find such a foundation having been laid in some of the petitions which we have verified. The learned counsel for the State has, however, submitted that once the appellants had entered into agreement with the State Government and agreed to make all payments as may be required on acquisition of the land, cannot resile later from that condition more particularly when some payments had also been made by some of them. In one case full payment was made for land use change. We do not think that a condition of making payments, generally under the agreement, would include a condition when

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.9.
Under the law there is no provision for making any such payment of fine by the societies. The agreement made regarding payment would obviously refer to the payment which are liable to be made legally under the provisions of the law or otherwise specifically mentioned in the agreement. It may be mentioned that in the agreement there is no particular provision for payment of fine on account of change in the land use. For the above reasons we do not think that the argument raised on behalf of the State Government prima facie holds water. As observed earlier, in our view, it is a fit case for being remanded to the High Court to consider the question involved as indicated above, namely, where the land has been acquired by the State itself and under the Act the appellants are not required to make any application for permission for change in the use of the land, any amount on account of fine for conversion of land use could be realised from the appellants or not who would also not be covered by definition of word 'occupant' under Sub-Section (20) of Section 2 of the Act.

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In the result, the appeals are allowed the order passed by the High Court is set aside and the matter is remanded for consideration by the Division Bench afresh in the light of the judgment and observations made above.

Costs easy.

.....J.
(BRIJESH KUMAR)

.....J.
New Delhi, (ARUN KUMAR)
April 27, 2004.