Karnataka High Court Mohammed Hassan Fazal vs The Deputy Commissioner, ... on 16 June, 1998 Equivalent citations: ILR 1998 KAR 3165, 1998 (6) KarLJ 16 Bench: P V Shetty ORDER 1. The petitioner, in this petition, claims to be the owner in possession and enjoyment of land measuring 2 acres in Survey No. 39 of Ibbalur village, Begur Hobli, Bangalore South Taluk, Bangalore District, having purchased the same by means of a registered sale deed dated 22nd of August, 1990 from the 4th respondent. 2. In this petition, the petitioner has called in question the correctness of the order dated 4th of February, 1994, a copy of which has been produced as Annexure-B, passed by the second respondent setting aside the order dated 10th of April, 1989 made in File No. ALN. SR (S) 374/88-89 by the first respondent according sanction for conversion of the aforesaid 2 acres of land from agricultural purpose to non-agricultural purposes. 3. Sri Sreedhar, learned Counsel appearing for the petitioner, submitted that the order Annexure-B is totally illegal and suffers from errors apparent on the face of the record. According to the learned Counsel, though the second respondent may have suo motu power to examine the correctness and legality of any order passed by his subordinates, in exercise of his revisional jurisdiction under Section 56 of the Karnataka Land Revenue Act, 1964 (hereinafter referred to as "the Act"), in the instant case, he has exceeded in his jurisdiction in exercising the said power to set aside the order passed by the first respondent according sanction for conversion of the land in question. He also submitted that the reasons assigned by the second respondent to set aside the order passed according sanction for conversion of the land in question, were totally extraneous and irrelevant for exercise of the power conferred on him under Section 56 of the Act. Elaborating this submission, the learned Counsel pointed out that mere requirement of the land for the purpose of formation of outer ring road or the proposal, if any, to acquire the land in question, is not a ground to refuse permission for conversion of the land in question; and on that account, if the permission for conversion of the land from agricultural purpose to non-agricultural purposes cannot be refused, it is not a ground to interfere with the order made by the first respondent according conversion of the land in question for non-agricultural purposes. In support of this plea, he relied upon the decision of this Court in the case of K. Channabasappa v State of Mysore and Another and also in the case of K.K. Radhakrishna Nair v State of Mysore and Others . He further submitted that whatever be the Scheme of the Town Planning Authority, it cannot be a ground to refuse permission for conversion of the land from agricultural purpose to non-agricultural purposes. In support of this submission, he drew my attention to the case of State of Karnataka and Others v N.K. Agrawal and Another. He also submitted that the second respondent has passed the impugned order totally on account of extraneous and irrelevant consideration. According to the learned Counsel, the second respondent has totally abused the suo motu revisional power conferred on him while passing the impugned order. 4. However, Sri Kotian, learned Additional Government Advocate, while strongly supporting the order Annexure-B passed by the second respondent, submitted that since the land in question is still required for the purpose of formation of service road to the outer ring road and other

connected purposes, the second respondent was fully justified in passing the order impugned. He also strongly refuted the assertion made on behalf of the learned Counsel for the petitioner that the impugned order came to be passed on account of extraneous and irrelevant considerations. The learned Government Advocate pointed out that under Section 56 of the Act, suo motu power is conferred on the second respondent and the second respondent, in the instant case, having regard to the facts and circumstances of the case, exercised the power conferred on him under Section 56 of the Act and passed the impugned order. The learned Government Advocate also relied upon the decision of this Court in the case of Divisional Commissioner v H. Hiriyannaiah, in support of his plea that the second respondent is conferred with suo motu power under Section 56 of the Act. He also submitted that since a declaration under Section 19(1) of the Bangalore Development Authority Act (hereinafter referred to as "the BDA Act") has already been issued declaring that the land in question is required for public purpose, this is not a fit case for interference by this Court in exercise of its writ jurisdiction either under Article 226 or under Article 227 of the Constitution of India. 5. Having considered the submissions made by the learned Counsel appearing for the petitioner and the learned Government Advocate appearing for respondents 1 to 3, I am of the view that the petitioner is entitled for the relief sought for by him in this petition. Admittedly, the first respondent has passed the order according permission for conversion of the land in question from agricultural purpose to non-agricultural purposes by his order dated 10th of April, 1989. Before permission was accorded, the first respondent had sought for the opinion of the Bangalore Development Authority and after considering the opinion given by the Bangalore Development Authority, he had accorded permission for conversion of the land from agricultural purpose to non-agricultural purposes. Under the Act, the first respondent is conferred with the power of according permission or refusing permission, sought for by an occupant of a land for conversion of the agricultural land from agricultural purpose to non-agricultural purposes. The Division Bench of this Court, in the case of K. Channabasappa, supra, has taken the view that mere proposal to acquire the land; and also merely because there is a notification issued for acquisition of the land, is not a ground to refuse permission sought for by a land owner for conversion of the agricultural land from agricultural purpose to non-agricultural purposes. It is useful to refer to the observations made on Page-4 of the said decision, which read as hereunder: "It is seen that the Deputy Commissioner has rejected the request in view of the opinion furnished by the Chairman, City Improvement Trust Board, Bangalore. It is not known what the opinion of the Chairman, City Improvement Trust Board was, nor is there anything in the order to show that the Deputy Commissioner has exercised his judgment with reference to the statutory requirements which must be the basis for rejecting the application. It may be relevant to state that the Deputy Commissioner is a statutory authority. He must validly exercise his power within the four corners of the statute. He cannot refuse permission to divert unless he is of the opinion 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 by him under sub-section (4) of Section 95. It is apparent that the impugned order is not based on any one of the above considerations but, solely based on the opinion of the Chairman of the City Improvement Trust Board which is, in our opinion, invalid ex facie. The contention of Mr. Vasudeva Reddy, learned High Court Government Pleader, is that the opinion of the Chairman of the City Improvement Trust Board cannot be said to be an irrelevant consideration and the rejection of permission to divert, must be deemed to be in the interest of the general public. But, in our opinion, the form of the order does not support the above contention. It is seen, therefrom, that the Deputy Commissioner has not at all exercised his mind. He has simply communicated the opinion of the Chairman, City Improvement Trust Board. Under the Act, the Deputy Commissioner is directly entrusted with statutory powers. He must exercise his personal judgment in individual cases. Even if he is of the opinion that the permission, if granted, would go against the interests of the general public, he must state his reasons for his conclusion. It cannot be his subjective satisfaction. We may state that even if the Chairman of the City Improvement Trust Board has got a scheme to acquire the land in question, that by itself is not a relevant consideration to refuse permission to divert. A case similar to this came up for consideration before this Court in the case of K.K. Radhakrishna Nair, supra, where the permission to divert was refused on the ground that a preliminary notification to acquire the land had been issued for the purpose of forming a layout by the City Improvement Trust Board. This Court held that that consideration cannot form the basis for refusing permission. In the instant case also, the Deputy Commissioner has refused permission solely on the opinion of the Chairman, City Improvement Trust Board and his order therefore cannot be supported". Similar is the view expressed by this Court in the case of K.K. Radhak-rishna Nair, supra. In this case, the Division Bench of this Court has observed thus: "We are of the opinion that the refusal of permission by the Deputy Commissioner was based on an irrelevant ground since Section 95 does not empower him to refuse permission for conversion on the ground that there was a proposal for acquisition of the property. What has been done in the land acquisition proceeding is no more than to notify a proposal for acquisition for the public purpose stated in the preliminary notification. No one can be sure whether that preliminary notification will culminate in a declaration under Section 6. And that being so, the Deputy Commissioner could not speculate on the course of the acquisition proceeding and refuse permission for conversion on the assumption that the acquisition proceeding with respect to the petitioner's land will continue". Therefore, from the law laid down by this Court in the cases referred to above, it is clear that even if there is a notification issued proposing to acquire the land, it is not a ground to refuse permission sought for by an occupant of the land for conversion of an agricultural land from agricultural purpose to non-agricultural purposes. If the Deputy Commissioner, who is a statutory authority, had kept in mind the law laid down by this Court and accorded permission, I am of the view that the second respondent has totally erred in law in interfering with the said order in exercise of the suo niotu power conferred on him under Section 56 of the Act.

The suo motu power conferred on the second respondent under Section 56 of the Act is required to be used sparingly and in furtherance of justice and to prevent abuse of power by the subordinate Officers and to set right the illegalities committed by the Officers while exercising the power conferred on them. In my view, as observed by me earlier, in the instant case, the second respondent was totally unjustified in interfering with the order passed by the first respondent according permission for conversion of the land in question from agricultural purpose to non-agricultural purposes. It is necessary to point out that the right to enjoy or utilise one's own property guaranteed to a land owner under Section 300-A of the Constitution of India, is interfered with by virtue of the provisions contained in Section 95 of the Act. Under these circumstances, it is not permissible for the revisional authority to exercise the suo motu power conferred on it to set aside the order passed by the statutory authority, like, the Deputy Commissioner, on grounds which do not empower the Deputy Commissioner himself to refuse permission for conversion of the land in question for non-agricultural purposes. Further, as a matter of fact, it is admitted in the additional Statement of Objections filed on behalf of the respondents that construction of the ring road had already been completed. However, what is sought to be made out on behalf of the respondents is that the land is required for the purpose of service road, footpath, drainage, etc. Further, the learned Government Advocate relied upon the declaration, a copy of which has been produced as Annexure-R2, issued under Section 19(1) of the BDA Act, to show that the land in question is required for public purpose. As noticed by me earlier, this Court, in the cases of K. Channabasappa, supra and K.K. Radhakrishna Nair, supra, has taken the view that even if there is a preliminary notification issued proposing to acquire the land in question, is not a ground to refuse permission for conversion of the land. Further, another Division Bench of this Court, in the case of State of Karnataka and Another v Smt. Mallakka (deceased) by L.Rs and Another1, while considering the question whether a person is not entitled to put forward a plea of deemed conversion on the ground that the final notification under Section 6(1) of the Land Acquisition Act has been issued, has taken the view that mere publication of the final notification does not automatically vest title to the land in the State Government and, therefore, the benefit of deemed conversion cannot be denied to a person unless the title to the property vests with the State Government by passing an Award and taking possession of the land. It is useful to refer to the observations made by this Court in the said decision, which reads as hereunder: "The learned Government Advocate submitted that the respondent cannot claim that there is a deemed conversion in accordance with the provisions of the Karnataka Land Revenue Act because the land was notified for acquisition by the Bangalore Development Authority and the final notification was already published. We are unable to appreciate as to how the publication of final notification would wipe out the title of the respondent to the land in dispute. Mere publication of final notification does not automatically vest title to the land in the State Government or the Bangalore Development Authority. The title continues to remain with the owner till the acquisition proceedings are completed by passing of the award and recovering possession or recovering

possession by applying urgency clause. It is not the case of the appellant that possession was recovered any time prior to January 28, 1982 and consequently the provisions of deemed permission are squarely attracted. In our judgment, the Karnataka Appellate Tribunal and the learned Single Judge were perfectly justified in not granting relief to the appellant". Therefore, the reliance placed by the learned Government Advocate on the declaration issued under Section 19(1) of the EDA Act is of no assistance to him and that cannot be a ground to deny the relief to the petitioner in this petition. 6. In the instant case, the order granting conversion was made as far back as on 10th of April, 1989. The notification under sub-section (1) of Section 17 of the BDA Act, which is similar to the preliminary notification under Section 4(1) of the Land Acquisition Act, came to be issued on 21st of November, 1991, which was published in the Karnataka Gazette dated 20th of May, 1993. Therefore, as a matter of fact, even on the date of making the order granting permission for conversion of the land, there was not even a preliminary notification issued under Section 17(1) of the Bangalore Development Authority Act. Under these circumstances, I am unable to understand as to what prompted the second respondent to invoke the suo motu power conferred on him under Section 56 of the Act. Further, it is also necessary to point out that the subsequent notification issued during the pendency of the proceedings before the second respondent, cannot be a ground for the second respondent to nullify the order of conversion made long prior to the issue of such a notification. While exercising the suo motu power of revision, what the second respondent is required to consider was whether there was any illegality in the order passed by the first respondent granting conversion of the land in question. The entire approach made by the second respondent to the matters in controversy is totally erroneous in law. Therefore, I am of the view that suo motu exercise of power by the second respondent to pass the impugned order is totally uncalled for, highly arbitrary and unreasonable. The reasons assigned for the exercise of the said power are totally extraneous to the exercise of the power conferred on him under Section 56 read with Section 95 of the Act. Further, as observed by me, even according to the respondents, only the service road, footpath, drain etc., remain to be done. In the rejoinder filed to the additional Statement of Objections, it is asserted on behalf of the petitioner that there is a land measuring 31 ft., in width, laying in between the land in respect of which conversion has been accorded, and the ring road. Even if this statement is accepted as correct, in my view, no prejudice or public injury will be caused on account of the order according permission for conversion of the land in question from agricultural purpose to non-agricultural purposes. Further, even if the land is required by the Bangalore Development Authority, it is open to the Bangalore Development Authority to complete the acquisition proceedings and acquire the same in accordance with law. That cannot be a ground to interfere with the order of conversion made by the first respondent-Deputy Commissioner. 7. In the light of the conclusion reached as above, I find it unnecessary to consider the submission of the learned Counsel for the petitioner that the second respondent has passed the impugned order totally an extraneous and irrelevant consideration and has abused his power. 8. For

the reasons aforesaid, I am of the view that the order Annexure-B dated 14th of February, 1994 passed by the second respondent is liable to be quashed and accordingly, it is quashed. 9. The first respondent is directed to grant Certificate of Conversion after collecting necessary Conversion Fees/Fine from the petitioner in accordance with law, within two months from the date of receipt of a copy of this order. 10. In terms stated above, this petition is allowed and disposed of. Rule is issued and made absolute. 11. Sri B.E. Kotian, learned Additional Government Advocate, is permitted to file his memo of appearance within four weeks from this date.