

The State of Karnataka vs Muneer Siddique S/O Late Mohammad Siddique Sab

The State of Karnataka vs Muneer Siddique S/O Late Mohammad Siddique Sab

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Court : Karnataka Dharwad

Decided On : Jan-29-2025

Judge : B.M.Shyam Prasad,Ramachandra D. Huddar

Appeal No. : WA/100033/2025

Appellant : The State of Karnataka

Respondent : Muneer Siddique S/O Late Mohammad Siddique Sab

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE 29TH DAY OF JANUARY, 2025 PRESENT THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD AND THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR CIVIL CONTEMPT PETITION NO. 100207 OF 2024 C/W CIVIL CONTEMPT PETITION NO. 100208 OF 2024, WRIT APPEAL NO.100383 OF 2024(KLR-CON), WRIT APPEAL NO.100384 OF 2024(KLR-CON), WRIT APPEAL NO.100409 OF 2024(KLR-CON), WRIT APPEAL NO.100410 OF 2024(KLR-CON), WRIT APPEAL NO.100411 OF 2024(KLR-CON), WRIT APPEAL

NO.100412 OF 2024(KLR-RES), WRIT APPEAL NO.100635 OF 2024(KLR-CON), WRIT APPEAL NO.100019 OF 2025, WRIT APPEAL NO.100032 OF 2025(KLR-CON),

Digitally signed by VISHAL WRIT APPEAL NO.100033 OF 2025(KLR-CON) NINGAPPA PATTIHAL Location: High Court of Karnataka, Dharwad IN CIVIL CONTEMPT PETITION NO.100207 OF 2024: Bench BETWEEN: K.V.N. GOVINDARAJ S/O K. GOPALA SHETTY AGE. 45 YEARS, OCC. AGRICULTURE, R/O. 1ST CROSS, R.K. GARDENS, NEW BEL ROAD, RMV 2ND STAGE, BENGALURU, NOW RESIDENT OF DANAYAKANAKERE VILLAGE, TQ. HOSAPETE, DIST. VIJAYANAGAR-40. COMPLAINANT (BY SRI. G.I. GACHCHINAMATH, ADVOCATE) -2- AND:

1. M.S. DIVAKARA S/O NOT KNOWN TO COMPLAINANT AGE. MAJOR, OCC. DEPUTY COMMISSIONER, VIJAYANGAR, DIST. VIJAYANAGAR-560040. ACCUSED

2. THE STATE OF KARNATAKA PROFORMA RESPONDENT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA FOR A1 AND R2) THIS CIVIL CONTEMPT PETITION IS FILED UNDER

SECTION 11 AND 12 OF THE CONTEMPT OF COURTS ACT, 1971, R/W. ARTICLE 215 OF CONSTITUTION OF INDIA,1950, PRAYING TO, TAKE ACTION AND PUNISH THE ACCUSED UNDER THE CONTEMPT OF COURTS ACT FOR HAVING

WILFULLY AND DELIBERATELY DISOBEYING THE ORDER

DATED 14-2-2024 MADE IN W.P.NO.100309/2024 (KLR-CON) PASSED BY THIS HONBLE COURT PRODUCED AT ANNEXUREA & ETC. IN CIVIL CONTEMPT PETITION NO.100208 OF 2024: BETWEEN: K.V.N. GOVINDARAJ S/O K. GOPALA SHETTY AGE. 45 YEARS, OCC. AGRICULTURE, R/O. 1ST CROSS, R.K. GARDENS, NEW BEL ROAD, RMV 2ND STAGE BENGALURU, NOW RESIDENT OF DANAYAKANAKERE VILLAGE, TQ. HOSAPETE, DIST.

VIJAYANAGAR-40. COMPLAINANT (BY SRI. G.I. GACHCHINAMATH, ADVOCATE) AND:

1. M.S. DIVAKARA S/O NOT KNOWN TO COMPLAINANT AGE. MAJOR, OCC. DEPUTY COMMISSIONER, VIJAYANGAR, DIST. VIJAYANAGAR-560040. ACCUSED

2. THE STATE OF KARNATAKA PROFORMA RESPONDENT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA FOR A1 AND R2) -3- THIS CIVIL CONTEMPT PETITION IS FILED UNDER

SECTIONS 11 AND 12 OF THE CONTEMPT OF COURTS ACT, 1971, R/W. ARTICLE 215 OF CONSTITUTION OF INDIA,1950, PRAYING TO, TAKE ACTION AND PUNISH THE ACCUSED UNDER THE CONTEMPT OF COURTS ACT FOR HAVING

WILFULLY AND DELIBERATELY DISOBEYING THE ORDER

DATED. 14-2-2024 MADE IN W.P.NO.100306/2024 (KLR-CON) PASSED BY THIS HONBLE COURT PRODUCED AT ANNEXUREA & ETC., IN WRIT APPEAL NO.100383 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER, VIJAYANGAR, DISTRICT VIJAYANAGAR 560040. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) AND: SRI. K.V.N. GOVINDARAJ S/O K. GOPALA SHETTY AGE. 45 YEARS, OCC. AGRICULTURE, R/O. 1ST CROSS, 4 K. GARDENS, NEW BEL ROAD, RMV 2ND STAGE, BENGALURU, NOW AT: DANAYAKANAKERE VILLAGE, TQ. HOSAPETE, DISTRICT. VIJAYANAGAR 560040. RESPONDENT THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100309/2024, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. IN WRIT APPEAL NO.100384 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER, VIJAYANAGAR DISTRICT, VIJAYANAGARA 560040. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) -4- AND: SRI. K.V.N. GOVINDARAJ S/O K. GOPALA SHETTY AGE. 45 YEARS, OCC.

AGRICULTURE, R/O DANAYAKANAKERE VILLAGE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR 560040. RESPONDENT (BY SRI. G.I. GACHCHINAMATH, ADV. FOR SOLE RESPONDENT) THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100306/2024, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. IN WRIT APPEAL NO.100409 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER VIJAYANAGAR DISTRICT, VIJAYANAGAR-560040. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) AND:

1. SRI. HANUMA NAIK S/O SHANKAR NAIK AGE. 51 YEARS, OCC. AGRICULTURE, R/O KALLAHALLI VILLAGE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-583201.

2. SHEKAR NAIK S/O SHANKAR NAIK AGE. 46 YEARS, OCC. AGRICULTURE, R/O KALLAHALLI VILLAGE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-583201.

3. CHINNAPPA NAIK S/O SHANKAR NAIK AGE. 41 YEARS, OCC. AGRICULTURE, R/O KALLAHALLI VILLAGE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-583201.

4. SRI. SURYA NAIK ALIAS SURESH NAIK

S/O SHANKAR NAIK AGE. 36 YEARS, OCC. AGRICULTURE, -5- R/O KALLAHALLI VILLAGE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-583201. RESPONDENTS (BY SRI. G.I. GACHCHINAMATH, ADVOCATE) THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100694/2024, PASSED BY THE LEANED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. IN WRIT APPEAL NO.100410 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER HOSPETE, VIJAYANAGAR DISTRICT 560040. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) AND: SRI. SHANKAR NAIK S/O

LATE RAMA NAIK AGE. 52 YEARS, OCC. AGRICULTURE, R/O. HOUSE NO.255, KALLAHALLI, TQ. HOSPETE, DISTRICT VIJAYANAGAR 583201. RESPONDENT (BY SRI. G.I. GACHCHINAMATH, ADV. FOR SOLE RESPONDENT) THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100693/2024, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY.

IN WRIT APPEAL NO.100411 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER HOSAPETE, VIJAYANAGAR DISTRICT-560004. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) -6- AND: CHANDRA NAIK S/O RAMUDU NAIK AGE. 53 YEARS, OCC. AGRICULTURE, R/O KALLAHALLI THANDA-583201, TQ. HOSAPETE, DIST. VIJAYANAGAR. RESPONDENT (BY SRI. G.I. GACHCHINAMATH, ADV. FOR SOLE RESPONDENT) THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH

COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100685/2024, PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. IN WRIT APPEAL NO.100412 OF 2024: BETWEEN: THE DEPUTY COMMISSIONER VIJAYANAGAR DISTRICT-560004 VIJAYANAGAR. APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA)

AND: LOHAGIRI INDUSTRIAL PVT. LTD., A COMPANY REGISTERED UNDER THE COMPANIES ACT HAVING IT REGISTERED OFFICE AT DOOR NO.140/313, HOSAPETE ROAD, PALACE GROUNDS, TQ. SANDUR, DIST. BALLARI. REP BY ITS AUTHORIZED SIGNATORY/DIRECTOR, SRI RAMESH GHORADE AGE. 50 YEARS, OCC. DIRECTOR R/O SANDUR, TQ. SANDUR, DIST BALLARI-583119.

RESPONDENT (BY SRI. G.I. GACHCHINAMATH, ADV. FOR SOLE RESPONDENT) THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 20.02.2024 IN W.P.NO.101116/2024, PASSED BY THE

LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. -7-
IN WRIT APPEAL NO.100635 OF 2024: BETWEEN: THE DEPUTY
COMMISSIONER, VIJAYANAGAR DISTRICT, VIJAYANAGAR-560040.
APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR,
AGA) AND: SMT. K. YASHODHA W/O K. MAHESH KUMAR AGE. 47 YEARS,
OCC. AGRICULTURE AND HOUSEHOLD WORK, R/O WARD NO.20, 2ND
CROSS, J.P. NAGAR, HOSAPETE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-
560040. RESPONDENT (BY SRI. ,ADVOCATE) THIS WRIT APPEAL IS FILED
U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE
WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN
W.P.NO.100683/2024 (KLR-CON), PASSED BY THE LEARNED SINGLE JUDGE
IN THE INTEREST OF JUSTICE AND EQUITY. IN WRIT APPEAL NO.100019
OF 2025: BETWEEN:

1. THE STATE OF KARNTAKA, BY ITS SECRETARY, REVENUE
DEPARTMENT, VIDHANA VEEDHI, BENGALURU-01.

2. THE DEPUTY COMMISSIONER, VIJAYANAGAR DISTRICT, VIJAYANAGAR-
560040. APPELLANTS (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN
K. UPPAR, AGA) AND: SRI K. MOHAMMAD SIRAJ S/O LATE MOHAMMAD
KHASIM SAB, AGE. 74 YEARS, OCC. AGRICULTURE, R/O HOUSE NO.10,
24TH WARD, 1ST CROSS,

-8- JAMBHUNATHA ROAD, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-560040.
RESPONDENT THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH
COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE
THE ORDER DATED 14.02.2024 IN W.P.NO.104777/2024, PASSED BY THE
LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. IN
WRIT APPEAL NO.100032 OF 2025: BETWEEN: THE DEPUTY
COMMISSIONER, VIJAYANAGAR DISTRICT, VIJAYANAGAR-583201.
APPELLANT (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR,
AGA) AND: SRI. B.R. KIRAN S/O B. RAMA NAIK AGE. 29 YEARS, OCC.
AGRICULTURE, R/O 31ST WARD, 1ST WARD, 1ST MAIN ROAD, N.C
COLONY, HOSAPETE, TQ. HOSAPETE, DISTRICT VIJAYANAGAR-583201.

RESPONDENT THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 14.02.2024 IN W.P.NO.100692/2024 (KLR-CON), PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. -9- IN WRIT APPEAL NO.100033 OF 2025: BETWEEN:

1. THE STATE OF KARNATAKA R/BY ITS SECRETARY, DEPARTMENT OF REVENUE, M.S. BUILDING, VIDHANA SOUDHA, BENGALURU-560001.

2. THE DEPUTY COMMISSIONER VIJAYANAGAR DISTRICT, HOSAPETE-583201. APPELLANTS (BY SRI. GANGADHAR J.M., AAG FOR SRI. PRAVEEN K. UPPAR, AGA) AND: MUNEER SIDDIQUE S/O LATE MOHAMMAD SIDDIQUE SAB AGE. 57 YEARS, OCC AGRICULTURE, R/O HOSAPETE, TQ. HOSAPETE, DIST. VIJAYANAGAR-583201.

RESPONDENT THIS WRIT APPEAL IS FILED U/S.4 OF KARNATAKA HIGH COURT ACT, 1961, PRAYING TO, ALLOW THE WRIT APPEAL AND SET ASIDE THE ORDER DATED 20.01.2024 IN W.P.NO.103199/2023 PASSED BY THE LEARNED SINGLE JUDGE IN THE INTEREST OF JUSTICE AND EQUITY. THESE CONTEMPT PETITIONS AND WRIT APPEALS, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER: CORAM: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD AND THE HON'BLE MR. JUSTICE RAMACHANDRA D. HUDDAR - 10 -

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE B.M.SHYAM PRASAD) These intra-court appeals are by the State Government and the Deputy Commissioner, Vijayapura [the jurisdictional Deputy Commissioner] calling in question the writ Courts order in a series of writ petitions. The writ Court by these impugned Orders has directed the jurisdictional Deputy Commissioner to issue conversion orders for the petitioners respective lands upon collecting the prescribed fees holding that there will be deemed approval under Section 95 of the Karnataka Land Revenue Act, 1964 [KLR Act], and some of the petitioner have filed corresponding complaints alleging that there is deliberate disobedience with the direction as aforesaid. The

details of these proceedings are as stated hereafter. The The Correspond
Impugned Writ Petition Corresponding ing

Order Date

Writ Appeal Contempt Petition W.P. No.100309/2024 CCC

- This petition relates W.A No.

Danayakanakere - 11 - village. W.P No.100306/2024 - This petition relates to land in Sy. No. 334/B, CCC W.A No. 331/B/5, 331/B/3, 14.02.2024 No.100208/ Danayakanakere village W.P No.100694/2024 - This petition relates W.A No. to land in Sy. No. 14.02.2024 Nil village W.P No.100693/2024 - This petition relates W.A No. to land in Sy. No. 14.02.2024 Nil village. W.P No.100685/2024 - This petition relates W.A No. to land in Sy. No. 14.02.2024 Nil village. W.P No.101116/2024 - This petition relates to land in Sy. No. W.A No. 60/A/5/B, 60/A/5/C, 20.02.2024 Nil 60/A/5D, 65/A, 65/B, 66, 67/B1 of Gollarahalli village W.P No.100683/2024 - This petition relates W.A No. to land in Sy. No. 14.02.2024 Nil village. - 12 - W.P No.104777/2022 - This petition relates W.A No. to land in Sy. No. 14.02.2024 Nil village. W.P No.100692/2024

- This petition relates W.A No.

of Kallahalli village. W.P No.103199/2023 - This petition relates

to land in Sy. No. W.A No.

Jambunathanahalli village.

2. The petitioners have filed their respective

petitions calling in question the corresponding Endorsements issued by the jurisdictional Deputy Commissioner informing them that their application for diversion/conversion of their respective lands [the subject lands] from agriculture to industrial/residential purposes is rejected because of the Reports either from the Hosapete Urban Development Authority [Urban Development Authority] or from the jurisdictional Tahsildar. - 13 -

3. The petitioners, depending on their asserted

circumstances, have contended that these Endorsements are issued for the reason that the lands do not have independent access, and some petitioners have asserted that their application could not have been rejected only because their lands are within Agricultural Zone. This Court must observe that a few petitioners have filed their petitions contending that they have not been issued with any endorsement even after the lapse of the contemplated time, and therefore, the directions must be issued to the jurisdictional Deputy Commissioner to issue conversion orders.

4. The State Government has resisted these

writ petitions essentially contending that [a] a Master Plan under the Karnataka Town & Country Planning Act, 1961 [KTCP Act] is published for the Hosapete Planning Area, which includes the subject lands, [b] the subject lands are in Agricultural Zone, and [c] unless the change in land-use, as is permissible under Section 14-A of the KTCP Act is granted, the subject lands cannot be used for any purpose - 14 - other than agriculture and related activities. However, the Urban Development Authority is not arrayed as a respondent and the Reports filed by the said Authority on the merits of the petitioners applications, wherever applicable, are also not placed on record.

5. The writ Court by the impugned orders has

directed the jurisdictional Deputy Commissioner to issue Conversion Order/s on collecting fee extending the benefit of deemed approval [as expressly stated in some impugned orders] opining [i] that the change in land-use under Section 14-A of the KTCP Act is not a condition precedent for permitting diversion under Section 95 of the KLR Act and the concerned can apply for the change in land-use after the diversion is permitted, [ii] that the request for diversion under Section 95 of the KLR Act cannot be rejected on the ground that there is no access because that is an aspect which has to be considered when sanction is sought for either under Section 15 or 17 of the KTCP Act, and [iii] that the settled law is if a particular land is within the limits of a local authority, and though the such land is assessed for -

15 - revenue, diversion under Section 95 of the KLR Act will not be necessary in view of the decision of a Division Bench of this Court.

6. These writ appeals are tagged together with

Sri J.M. Gangadhar, the learned Additional Advocate General, contending that the State proposes to raise similar questions in all these appeals. Sri J.M. Gangadhar, relying upon certain documents that are produced in these proceedings as additional documents along with applications, canvasses that the jurisdictional Deputy Commissioners Endorsements, wherever issued, are because of the Urban Development Authoritys decision, and unless the merits of such decision is examined with the due opportunity to such authority, the jurisdictional Deputy Commissioner could not be directed to collect conversion fee.

7. Sri J.M. Gangadhar also emphasizes that

the State way back in the year 2012 has issued guidelines

for permitting change in land use, which can only be under - 16 - certain circumstances and that the import of this circular must be considered if there is to be a complete adjudication on whether the jurisdictional Deputy Commissioner must permit diversion to non-agricultural purposes rather than leave it open to the concerned to approach the Development Authority for change in land use. The learned Additional Advocate General canvasses that this would especially be so when it is indisputable that the subject lands are part of Agricultural Zone and the settled law is that the KTCP Act will prevail over the KLR Act because it is a special legislation.

8. Sri G.I. Gachchinamath, arguing in support

of the impugned orders, argues that this Court is taking a consistent view that permission for diversion under Section 95 of the KLR Act can be granted and the concerned thereafter will have to approach for change in land-use under Section 14-A of the KTCP Act opining that if the concerned does not secure change in land-use as aforesaid, the permission for diversion will be rendered otiose. The learned counsel also canvasses that, as is observed by the - 17 - writ Court in

some of the impugned orders, the jurisdictional Deputy Commissioner has in certain cases permitted diversion of lands under Section 95 of the KLR Act from agricultural to non-agricultural purposes though such lands are within the agricultural zone as per the Master Plan.

9. This Court upon reading Section 95 of the

KLR Act must observe that an agriculture land, except for construction that is contemplated under section 95[1] of the KLR Act, cannot be diverted to any non-agricultural use unless an application is filed with the concerned Deputy Commissioner under Section 95[2], and the Deputy Commissioner may, subject to the provisions of the Act and the Rules, refuse permission or grant permission on such conditions as he/ she may think fit. Further there can be deemed approval for diversion under Section 95 the KLR Act under two circumstances. The Deemed approval will firstly be under section 95[2] of the Act when the diversion of the agricultural land is as per the Land-use specified in the Master Plan published under the KTCP Act, and the deemed - 18 - approval will secondly be under section 95[5] of the Act when a Deputy Commissioner does not inform an applicant of his decision under 95[2] of the Act within 4 [four] months from the date of receipt of the application.

10. This Court must next observe that it could

be opined that there cannot be any deemed approval for diversion from agricultural to non-agricultural use if proposed use is contrary to the Master Plan. The Planning Authority is also not given the power to permit an use [change in land-use] which is contrary to the Master Plan unless it is under the specific circumstances delineated under Section 14-A of the KTCP Act. The State Government has also issued Guidelines in the year 2014 that govern the change in land-use under Section 14-A of the KTCP Act. The Change in Land-use even when permissible must be followed by the approval either under Section 15 or 17 of the KTCP Act. - 19 -

11. The prayer for directions to a Deputy

Commissioner to issue conversion Orders based on deemed approval under Section 95[2] of the KLR Act, when the subject lands are within Agricultural Zone as per the Master Plan, must be after considering the afore aspects as also the possible mischief or havoc that could be if deemed approval is invoked despite the expressed provisions under KTCP Act and KLR Act and the interplay between these two enactments in the light of the precedence that could be between these two enactments. If the writ Courts directions to the jurisdictional Deputy Commissioner is applying deemed approval under Section 95 [2] of the KLR Act, the afore aspects must be considered. Crucially, the Development Authority is not a party to the proceedings and for adjudication of the questions as aforesaid, it will be a necessary party. It is settled law that a cause cannot be closed for non-joinder of a necessary party and an opportunity is to be extended to implead such a necessary party. - 20 -

12. The writ Court for complete adjudication

may have to consider whether there should be a deemed approval under Section 95[5] of the KLR Act only if the Deputy Commissioner does not inform an applicant about the decision on the application within 4 [four] weeks from the date of the application. In other words, the writ Court will have to consider whether there could be deemed approval if endorsements are issued rejecting the request. The writ Court will have to next consider whether directions can be issued without reference to Section 95[3] of the KLR Act. A Deputy Commissioner perhaps can, given the provisions of Section 95[3], refuse permission under certain circumstances, and therefore, the merits of the reasons assigned should be considered after a reasonable opportunity to the Deputy Commissioner to place on record all circumstances.

13. This Court must observe that in the

circumstances discussed a host of questions [some of which are referred to in the course of this order as possible - 21 - questions will have to be examined] for consideration and this Court must have the advantage of the writ Courts opinion on such questions with even the Development Authority being heard. Therefore, the petitions must be restored for reconsideration by the writ Court. In this regard,

this Court must refer to the exposition of a Full Bench decision of this Court in Town House Building Co- operative Society v. Special Deputy Commissioner reported in 1988 [2] KLJ 510.

The Division Bench in appeal may disagree with the interpretation of law which would result in the reversal of the order of the single Judge. Resultantly, the other questions would survive for consideration. In such a situation the Bench may choose to decide the other questions itself. But there will be nothing wrong for the Bench to remand the case for consideration by the learned single Judge, of the other questions to be decided on merits. The appeal is against the decision of a learned single Judge. The Bench should have the benefit of the opinion of the learned single Judge on all points. If the Bench does not have the opinion and findings of the learned single Judge, will it not be handicapped to some extent while deciding the other questions by itself? Ordinarily, the Bench in appeal - 22 -

does not interfere with the findings arrived at by a learned single Judge on facts. In such a case it would be more appropriate to obtain the benefit of the opinion of the learned single Judge.

At this stage, this Court must also record that both J.M. Gangadhar and Sri G I Gachchinamath also agree on the petitions being restored for reconsideration leaving open all questions to be considered again. This Court must next observe that the contempt proceedings must fail in the light of the conclusion as aforesaid. For the foregoing, the following:

ORDER

1. The Writ Appeals are allowed in part, the

writ Court impugned order in subject Writ Petitions are quashed, restoring the Writ Petitions for reconsideration, directing the petitioner to implead the Development Authority as a Respondent.

2. The office shall list the writ Petitions before the writ Court on 24.02.2025. - 23 -

3. Consequently the Contempt proceedings in CCC No.100207/2024 and CCC No.100208/2024 are closed. Sd/- (B.M.SHYAM PRASAD) JUDGE Sd/- (RAMACHANDRA D. HUDDAR) JUDGE Bvv/rsh, ct:vp LIST NO.: 1 SL NO.: 52

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