Case Note: Case concerning a Government order converting agricultural land for non-agricultural use in order to establish a housing colony on the banks of river which is one of the sources of drinking water in the city. The Court ruled that issue of possible depletion of available water and its pollution as a consequence could be raised by the petitioners and others when the Government proposes to establish a new Township and invites objection to such proposal as required under Section 6 of the Land Revenue Act.

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IN THE HIGH COURT OF KARNATAKA

Decided On: 24.04.1992

Prof. A. Lakshmisagar and etc.
v.
State of Karnataka and others

Hon'ble Judges:
M. Rama Jois and R. Ramakrishna, JJ.

ORDER

Rama Jois, J.

1. The State Government has nullified the order of this Court in the order impugned in these petitions, is the most extraordinary feature disclosed in this case, in that, in the impugned order the State Government has directed that several orders made by the Special Deputy Commissioner, Bangalore Rural District under S. 95 of the Karnataka Land Revenue Act according permission for conversion of 414 acres of agricultural land for non-agricultural use, to wit, for establishing a housing colony on the banks of Arkavati River near Tippagondanahalli Water Reservoir, one of the sources of supply of drinking water to the City of Bangalore, which were quashed by this Court, in Writ Petitions Nos. 19919 to 19954 and 21172 to 21177/1982 presented by the Bangalore Water Supply and Sewerage Board, which order was confirmed in Writ Appeals Nos. 744 to 785 of 1987, shall continue.

2. The above ground urged by the petitioners against the impugned order caused consternation to us, as it was beyond our comprehension that the Government had done so, but after hearing. We are amazed to find that the Government has actually done so.

3. The brief and undisputed facts of this case are these :--

(I) Forty-two individuals purchased agricultural lands on various dates in 1978-79, in all 414 acres in extent situate in the villages of Bangalore Rural District, on the Banks of

Arkavati River within a distance of about 2 Kms. from Chamaraja Sagar Water Reservoir at Thippagondanahalli which has been one of the major source of supply of drinking water to the City of Bangalore. They formed a society called Arkavati Farmers Co-operative Society. Thereafter, the individual land owners totalling 42, submitted applications to the Special Deputy Commissioner, Bangalore Rural District under S. 95 of the Karnataka Land Revenue Act praying for permission to convert the said lands for non-agricultural purpose. The society also addressed a letter to the Director of Town Planning seeking his approval for the establishment of a Township consisting of more than 700 houses on the said 414 acres of land. The Director of Town Planning in his letter dated 21-5-1979 stated that the development of the area would result in a new township with a population of about 20,000 persons and absorb future population that would otherwise come to the City of Bangalore. He recommended the granting of permission for conversion subject to certain conditions. By order dated 5th June, 1979 the Special Deputy Commissioner granted permission for conversion of the lands imposing several conditions, one of them was that the layout and building plan should be got duly approved by the Director of Town Planning. Thereafter, on the application filed by the Society to the Karnataka State Pollution Control Board, the latter granted no objection certificate for establishing the township on the aforesaid 414 acres of land on 29-11-1979.

(II) The Bangalore Water Supply and Sewerage Board ('Water Board' for short) the statutory authority constituted and The Bangalore Water Supply and Sewerage Act, 1984 entrusted with the function of ensuring supply of water to the City, filed appeals before the Karnataka Appellate Tribunal against the orders of the Deputy Commissioner according permission for conversion of the lands for non-agricultural purpose on the ground that establishing of a township near such a sensitive area i.e., the source of supply of drinking water to the lakhs of people in the City of Bangalore was injuries to public interests and it would result not only in the pollution but also depletion of water in the river and the reservoir. The Tribunal dismissed the appeals of the Water Board holding that it had no *locus standi* to present the appeals and its grievance was imaginary.

(III) Aggrieved by the order of the Appellate Tribunal, the Water Board filed Writ Petitions before this Court questioning the correctness of the view taken by the Tribunal as also the legality of the order passed by the Special Deputy Commissioner under S. 95 of the Act. The Water Board also challenged the deemed conversions said to have been secured by certain individuals on the ground that the Special Deputy Commissioner had failed to inform the applicants his decision on the application for conversion, within four months, in view of sub-sec. (5) of S. 95 of the Act. Swami, J., who decided the Writ Petitions held that having regard to the language of sub-sec. (4) of S. 95 of the Act, which required the Deputy Commissioner to refuse permission for conversion of lands from agricultural use to non-agricultural use if it was injurious to public interest and in view of sub-sec. (4) of S. 95 which made it obligatory for the Deputy Commissioner to impose conditions for safeguarding public interest, even in a case in which permission is accorded any member of the public or the Water Board had the necessary *locus standi* to prefer the appeal.

(IV) The learned Judge accepted the contention of the Board that unless a decision was taken by the State Government that a (own-ship should be established in the said locality after following the procedure prescribed under the provisions of the Land Revenue Act and also took a decision on the question as to whether the new township should be declared as a 'local planning area' under the Karnataka Town and Country Planning Act, 1961, the Deputy Commissioner could not entertain applications under S. 95 of the Act for according permission for conversion of agricultural land for residential purpose in such a scale which would bring into existence a new town, even in the absence of a notification issued by the Government permitting the establishment of a new township. Accordingly, Writ Petitions were allowed. The decision is the Bangalore Water Supply and Sewerage Board v. Kantha Chandra. The operative portion of the Order reads :--

"35. For the reasons stated above, these Writ Petitions are allowed.

(a) The impugned order of the Tribunal bearing Appeals Nos. 3 to 6 of 1980 and 12 to 40, 42 and 43 of 1981 dated 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 235/78-79 and ALN.SR.l 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."

The resultant position was the orders of conversion granted or deemed to have been granted by the Deputy Commissioner were set aside in respect of the entire 414 acres of land.

(V) During the pendency of the Writ Petition before this Court, the DLF Universal Ltd., Delhi, common respondent to the three petitions, a Company registered under the Companies Act, purchased the entire extent of land from its earlier individual owners. Aggrieved by the order of the learned Judge, D.L.F., preferred Writ Appeals before a Division Bench of this Court. The Appeals were heard and decided by Mohan, C. J. (as he then was) and Shivaprakash, J., by order dated 28th November, 1990. The Writ Appeals were dismissed. The operative portion of the order in the Writ Appeals reads :--

"13. In the result, the Writ Appeals will stand dismissed. Writ Petition No. 13014/89 will stand allowed. There shall be no order as to costs.

Our judgment will not come in the way of the Government independently considering the matter and coming to any conclusion on merits."

(VI) During the pendency of the Writ Petitions itself, D.L.F., obviously realising the serious objections to the Township which it proposed to establish had submitted a revised proposal to the Government on 13-8-1985. According to the 2nd respondent, the whole idea of establishing a Township on the 414 acres of land was given up and instead, the 2nd respondent wanted only to establish a garden colony consisting of 270 plots. The new proposal is as follows :--

"The New Proposal :-

5. Larger Sites :-- The New Proposal envisages a garden colony as against a residential layout. The area of nearly 400 acres will have only 275 plots of one acre and more.

6. Sewerage :-- As against Central Sewage System, now we propose to provide individual septic tanks based on soil absorption system with dispersion trenches. The clear effluent will be used for irrigation of gardens on each site.

7. Arboriculture :-- The Garden Colony will be subjected to extensive tree plantation to bring back the original character of the Garden City of Bangalore. This will not only create a Green Belt on either side of the River Arkavati but will also contribute to improve the overall ecology of the area. In consequences the area would attract more rainfall and the soil erosion, which is area would attract more rainfall and the soil erosion, which is presently silting the Reservoir will be considerably reduced.

Examination of BWS and SB Objections :--

a) Number of Plots :-- The total number of country villa sites will be restricted to about 275.

b) Minimum Area for Country villa :--

Each she will cover an area of one acre or more and there will be only one country villa with associated out-houses on each such site.

(c) Layout Approval :-- A sketch of the New Layout indicating the proposed roads, central amenities and villa sites is attached. This plan may please be approved with such modifications as contained necessary by the Chief Town Planner or any other Officer/ agency nominated by the Government. Ground coverage for the main house in each plot will exceed ten per cent of the area of the plot.

d) Sale of property :-- A clause in the sale deed will be incorporated which will forbid any sub-division of the property below one acre.

e) Sewage Disposal :-- As against a Central Sewerage plant for treatment of effluent, each villa will have an individual septic tank based on soil absorption system with Dispersion Trenches. Each septic tank will cater for 15 users. The tank and connected works will be located a minimum of 100 (metres) away from the river in case of those

plots which fall near the river line. This should ensure that there is no pollution under any circumstances. The clear effluent will be used for irrigation of lands and gardens on each plot.

f) Water Supply :-- The maximum requirements of potable water would be about 10 lakh litres per day. This can be easily met from the borewells and open wells.

(g) Ecology :-- There was a fear expressed that large scale felling of trees would take place thus denuding the whole area. However, the truth of the matter is that there is hardly any dense tree growth at present. The proposed scheme of large plots with country villas will result in plantation of many avenue and fruit bearing trees. We have already started tree plantation on a large scale. The resulting increase in the density of trees will improve the ecology of the entire area."

The State Government considered the above proposal and passed an order on 29th June 1991. In the preamble to the order, the history of the case including the orders of this Court in the Writ Appeal, have been set out. The order reads :--

"Proceedings of the Government of Karnataka

Sub : M/s. DLF's Arkavathi Green Valley Retreat Scheme Development of 270 sites for country villas -- reg.

Regd: i) Proposal dated 12-8-1985 from M/s. DLF Ltd., New Delhi.

ii) Letter dated 29-5-1991 from M/s. DLF Ltd.

iii) U.O. Note No. RD 91 LGB 91 dated 14-5-1991 from the Secretary to Government, Revenue Department.

iv) Letter No. TP/AD2/Dev/91-92 dated 17-5-91 from the Director of Town Planning.

v) Letter No. BMRDA/RC/319/91-92 dated 18-5-91 from the Metropolitan Commissioner, BMRDA, Bangalore.

Preamble :-- M/s. DLF Universal Limited along with its associates and subsidiary Companies have acquired about 414 acres of land falling in Survey Numbers 1/6, 1/7, 2, 4, 5,6/1, 6/2, 7, 12, 13/2, 19 to 69, 71 to 81, 83/1, 87/4, 88, 90, 91, 92/1, 92/2, 93/1, 93/2, 109/3 and 109/4 in Gangenahalli village, 37/5 in Kurubarahalli village, 7 to 11, 13 and 14 in Varthur village and 1 to 31 in Varthur Narasimhapur village all in Tavarekere Hobli, Bangalore South Taluk, Bangalore District on the both sides of River Arkavathi originally for the purpose of formation of residential colony under the name of M/s. DLF Arkavathi Green Valley Retreat Scheme with Central Sewerage System. The Bangalore Water Supply and Sewerage Board vide its letter dated 2-1-85 had suggested to the Government to examine the entire matter. In the meantime M/s. DLF Universal Ltd. has submitted revised proposal on 12/13-8-85 stating that the new system involves

construction of individual septic tanks coupled with soil absorption system with dispersion trenches and the effluent water will be used for gardening etc. They claim that there would be no seepage and consequent pollution. The number of plots will not exceed 270 and they will be utilised for construction of "country villas" by the buyers of the sites/ plots and by M/ s. DLF Universal Ltd. The plots will be approximately one acre in extent and above and no further sub-division by way of sale will be permitted. As against the previous proposal of central sewerage plant for treatment of effluent, the revised proposal entails that each country villa will have a septic tank coupled with soil absorption system. Each septic tank will cater for 15 users and the septic tanks will be located at minimum distance of 100 metres away from the river line in the case of plots which adjoin the river line. Apart from this, the effluent will be used for gardening in each plot. Water supply for the colony at 10 lakhs litres per day will be met from Borewells and open wells. The garden colony will have extensive tree planting which will improve the ecology of the whole area. The then Hon'ble Chief Minister visited the spot along with the then Chief Secretary, Secretary to Chief Minister and Minister for Housing & Urban Development Department on 12th August 1985. Subsequently the Government had constituted an expert committee to consider the matter and also later on the recommendation of this Committee were forwarded to the Karnataka State Pollution Control Board among others for views. In the meantime the BWSSB had approached the Hon'ble High Court of Karnataka and the latter in WP No. 19919 to 19954 and 21172 to 21177 of 1982 quashed the order of the Karnataka Appellate Tribunal order dated 13-8-81 by which the permission given by the Revenue Department for conversion from agriculture to non-agriculture purpose had been upheld etc. Against this order of the High Court of Karnataka (single Bench) M/s. DLF Universal Ltd., and others filed writ Appeals before the Karnataka High Court and the latter also dismissed these writ appeals. But while doing so it expressed the opinion in W.A. No. 744 to 785 of 1987 by order dated 28-11-90 that "Our judgment will not come in the way of the Government independently considering the matter and coming to any conclusion on merits". In the meantime, the Government also had called for the opinion of the Secretary to Government in the Revenue Department, the Director of Town Planning, BMRDA and the Karnataka State Pollution Control Board etc. The Karnataka State Pollution Control Board has sent its reply vide its letter dated 13-5-91 slating that the proposal of M/s. DLF and other may be approved subject to the following conditions :--

i) Since the area proposed to be developed is in the sensitive zone i.e.. Catchment area of Thippagondanahalli Reservoir, and precautions are required to be taken so that there will not be any direct or indirect entry of sewerage effluents to the reservoir or the river.

ii) The septic tank, soak pit, dispersion system of each farm house shall be located farthest from the borders of the reservoir and the river.

iii) The design for the Septic tanks, soak pits and dispersion system shall be submitted to Karnataka State Pollution Control Board and approval obtained before commencement of building activities.

iv) The sludge from the septic tank shall be removed compulsorily once in two years, dried in a separate yard following scientific method for which records must be maintained and produced for verification by Karnataka State Pollution Control Board.

v) Pesticides, fungicides and insecticides should be applied on the vegetation in the area in a scientific method as approved by the agricultural department to avoid contamination of surface water.

vi) Peasometers shall be positioned at regular intervals along the reservoir of river borders in the proposed site after getting the advice from the National Environmental Engineering Research Institute. Nagpur for appropriate monitoring of contamination of ground water likely to be reached to either river or reservoir.

vii) The applicant shall abide by such other conditions as prescribed by the Karnataka State Pollution Control Board as and when the same are found necessary.

These recommendations/conditions of the Karnataka State Pollution Control Board, along with the opinion received from others and also taking into consideration an over-all view of the entire matter and the letter dated 20-5-1991 of M/s. DLF Universal Ltd., the Government have decided to take the following decisions in public interest.

Order No. HUD 90 MRL 84, Bangalore
Dated 29th June 1991

a) M/ s. DLF is hereby directed to stipulate in each sale/lease deed (to be registered), while selling the plots/country villas that each buyer of the site/country villas shall strictly abide by the Pollution Control measures recommended by the Karnataka State Pollution Control Board as stated above and the latter will have the right to inspect and satisfy itself with the compliance of the measures and in case of any violation, the Pollution Control Board shall take action as per rules against the violator(s).

b) Government hereby order for continuance of the permission given for conversion by the Revenue Department in 1979-82 for converting these lands to non-agricultural purpose (residential).

c) It is further directed that any monitoring by peasometers may be undertaken directly by the Karnataka State Pollution Control Board, and BWSSB, independently of DLF Universal Ltd.

d) The DLF Universal Ltd., would be, over a period of time disposing off all the sites/ country villas and accordingly the ownership of these plots/country villas will get progressively transferred to different individuals. It is therefore, directed that all obligations and restrictions that may be imposed on M/s. DLF Universal Ltd. by Governmental authorities will have to ultimately and progressively be applicable to devolve upon the successors of M/s. DLF Universal Ltd., to whom these plots/country villas will finally get transferred by sale/lease deeds.

e) The revised present proposals dated 12/13-8-85 for development of sites not exceeding 270 numbers for construction of country villas by M/s. DLF Universal Ltd., and/or their successors are only out lines regarding the layout, the roads and other facilities. It is directed that a firm commitment on the development of sites not exceeding 270 country villas will be strictly adhered to by M/s. DLF Universal and their successors. Therefore, any modifications to the layout if found necessary later on, while executing the civil works, may be permitted in consultation with the Town Planning Authorities, but in no way sites for 270 country villas will be exceeded."

(Underlined by us)

As can be seen from the contents of the Order, the Government has, inter alia, directed the continuance of the permission given for conversion by the Revenue Department between the years 1979-1982 for converting these lands for non-agricultural purpose. Questioning the legality of this Government Order, these three public interest Writ Petitions are presented.

4. The substance of the pleadings in all the three petitions may be summarised thus :-- (I) The Water Reservoir constructed at Thippagondanahalli across the river Arkavati is one of the main sources for supply of water to the City of Bangalore with a population of 60 lakhs. By allowing a town ship to come up on the Banks of Arkavafi river by construction of 270 country villas, both quality and quantity of water in the river and reservoir would be adversely affected which is injurious to the interest of millions of people residing in the City of Bangalore. Not only there would be depletion of water but also there is every chance of pollution of water and, in fact, that has been the stand of the Water Board in the Writ Petitions filed by it in which it had succeeded. Granting permission for establishing of township in such a sensitive locality was wholly arbitrary as it only favours DLF, which is a financially powerful company engaged in profit making venture of land development and a few affluent individuals, who alone could purchase such sites and construct country villas, and is totally injurious to public interest. The State Government had acted totally without jurisdiction in passing the impugned order and it had done so only on collateral considerations yielding to the influence brought to bear on it by DLF. In spite of the orders of this Court quashing the orders of conversion, in the impugned order, the Government has directed that the very orders which were quashed by this Court shall continue and thereby setting at naught the orders of this Court, which is not only high-handed, arbitrary and without jurisdiction, but also amounted to committing contempt of this Court. By the impugned order, the State Government has in fact and in truth permitted establishment of a new township consisting of 270 houses and this could not have been done by the State Government without complying with the mandatory provisions of the Land Revenue Act and the Planning Act. In any event, the State Government had no power to grant conversion of agricultural land for non-agricultural use as the said power is vested in the Deputy Commissioner under S. 95 of the Land Revenue Act.

(II) The purchase of lands by 42 individuals who were not agriculturists and who had more than Rs. 12,000/- income was void in view of S. 79-A of the Karnataka Land

Reforms Act and therefore the lands stood vested in the Government as provided in that Section. Further, under S. 79B of the Act, no Company could own agricultural lands and therefore the D.L.F., could not have purchased 414 acres of agricultural land and therefore in view of S. 79B of the Act action should have been taken by the revenue officers to forfeit all the lands to the State Government as provided in that Section.

5. In this order, for convenience, we are referring to the respondents as in Writ Petition No. 2285/1992. The first respondent State Government, the 4th respondent --D.L.F. Company and the 3rd respondent --Pollution Control Board have filed Statement of Objections refuting the material allegations and averments in the petitions. The Water Board, the 2nd respondent, has not filed statement of objections or any statement.

6. Sri G.V. Shantharaju and Sri K. Channabasappa, learned Counsel for the petitioners addressed arguments for the petitioners. Arguments were addressed by learned Advocate General for the State, learned Senior Advocate Sri Ashok Desai for the D.L.F. Universal Ltd., and learned Advocate Sri V. R. Datar for the State Pollution Control Board, Bangalore; Water Supply and Sewerage Board remained unrepresented.

Learned Counsel for the petitioners urged the following contentions :--

(1)The impugned order which directs that permission for conversion of agricultural lands for non-agricultural use which were quashed by this Court shall continue is highhanded, arbitrary, illegal, destructive of Rule of Law and also amounts to committing contempt of this Court.

(2) Under the Land Revenue Act the Government had no power to grant permission for conversion of agricultural land for non-agricultural use as that power under S. 95 thereof is conferred only on the Deputy Commissioner and therefore the order is without authority of law.

(3) Though the clear pronouncement of this Court in the Writ Petition filed by the Board and in the Writ Appeal arising therefrom was, unless a new Township is established after following the procedure prescribed under the Land Revenue Act, and the Karnataka Town and Country Planning Act, question of exercise of power under S. 95, would not arise, the Government has passed the impugned order allowing a new Township and therefore not only it is violative of the Land Revenue Act but also a clear case of flouting the decision of this Court.

(4) The impugned order is totally arbitrary and violative of Arts. 14 and 21 of the Constitution, as it adversely affects the quality and quantity of drinking water to the City and it is passed for collateral consideration, namely, the influence brought to bear on the Government by the DLF and which would benefit only the DLF to make profit and a few affluent individuals to put up country villas which would be at the cost of the interests of millions of residents of the City of Bangalore.

(5) Though by the force of S. 79-A and/ or Section 79-B of the Land Reforms Act the 414 acres of land has to be forfeited to Government, the Government has chosen to pass the impugned order and therefore, it is illegal.

7. Though the pleadings are long, the records are voluminous and the arguments were elaborate, in our opinion, the matter lies within a narrow compass, in that, the decision in the case depends upon our answer to the three questions of law which arise for consideration, on the first three contentions urged by the learned counsel for the petitioners. They are :--

(1) Whether the Government Order is not invalid as it directs that the orders of the Special Deputy Commissioner granting permission for conversion of agricultural lands in question for non-agricultural use, which were quashed by this Court, shall continue?

(2) Even if the impugned order were to be understood as an order granting fresh permission for conversion of the lands in question for non-agricultural use, whether the State Government had the power to pass the same, and if not whether it is not illegal and without authority of law?

(3) Whether the impugned order accords permission for establishing a new township and if the answer to the question is in the affirmative, whether the Government Order is not invalid for not following the mandatory provisions of the Karnataka Land Revenue Act?

8. Before considering the three questions it has become necessary to consider as to what is the scope of the liberty given by the Division Bench of this Court to the Government by making the following observations :--

"Our judgment will not come in the way of the Government independently considering the matter and coming to any conclusion on merits."

The learned counsel for respondents 1 and 4 heavily relied on the said observation as authorising the Government to pass the impugned order and therefore was a complete answer to the aforesaid three questions.

9. A reading of the judgment of Swami, J., would show that the ground on which the order of the Special Deputy Commissioner granting permission for conversion was quashed was that in the first instance the State Government had to take a decision as to whether a new township should be permitted on the 414 acres of land situate near Thippagondanahalli reservoir and it was only after the Government took a decision, if the decision were to be for establishing a township and such a township was brought into existence after following the procedure prescribed under the Karnataka Land Revenue Act and the Planning Act, the question of the Deputy Commissioner entertaining application under S. 95 of the Land Revenue Act would arise. This view of the learned Judge was affirmed by the Division Bench. Relevant portion of the judgment of the Division Bench reads :

"In other words, only when a township is proposed to be established the question of such conversion would arise. Granting permission for such conversion without even there being a proposal to establish a township, will amount to circumventing the provisions of S. 148 of the Land Revenue Act. It is not the case of the appellant that already a township exists and it is proposed to be extended and for such extension the agricultural lands in question required to be converted into non-agricultural purposes. If the records produced before the Court do not disclose any decision taken by the State Government to establish a new township, the question of conversion of lands would not arise.

XXX XXX XXX XXX

Thus, as rightly concluded by the learned single Judge, the preliminary requirement for establishing a new township as required under the provisions of the Town Planning Act as well as been complied with, there is no scope for invoking S. 95 of the Land Revenue Act."

It is common ground that the Authority competent under the Land Revenue Act to take a decision as to whether a new township should be established and to issue a statutory notification is the State Government and according to the decision of the Division Bench, such a decision was a condition precedent for invoking the powers of the Deputy Commissioner under S. 95 of the Land Revenue Act. Therefore, it is crystal clear that the liberty given by the Division Bench was, that the Government could proceed to consider as to whether a new township should be allowed to come into existence on the lands in question. Therefore, the only course that was open to the Government, in view of the liberty given by the Division Bench was to consider whether a new Township according to the modified proposal which was pending before it at the time of disp9sal of the Writ Appeals, should be allowed to be established on the lands in question. If its tentative decision was in favour of establishing a new Township, then it should have followed the procedure prescribed under S. 6 of the Land Revenue Act and it was only after a notification in terms of S. 5 read with S. 6 of the Land Revenue Act was issued the 4th respondent could file application before the Special Deputy Commissioner under S. 95 of the Act, for, the power to grant permission for conversion of agricultural land for non-agricultural use is conferred under S. 95 of the Land Revenue Act only on the Deputy Commissioner and no other authority. Therefore, we are unable to agree with the submission made on behalf of respondents 1 and 4 that the observations made in the last part of the Judgment of the Division Bench conferred any extra power on the Government which was not given to it under the provisions of any of the Acts. Our conclusion on this aspect of the matter is that,

(1) The Government was given liberty to take a decision in accordance with law on the question as to whether a new township should be established on the lands in question.

(2) If the Government's decision was in favour of establishing a new Township in the locality, it could implement it by complying with the mandatory procedure prescribed under the provisions of the Land Revenue Act, but itself could not proceed to pass orders without complying with the provisions of the Land Revenue Act.

(3)_ This Court did not give liberty to the Government to pass orders under S. 95 of the Land Revenue Act, which power under that Section is conferred only on the Deputy Commissioner.

(4) The Government was not given the liberty to nullify the writ issued by this Court and to restore the orders quashed by this Court. Having clearly explained the scope of the observations made by the Division Bench, which is by itself very clear, we now proceed to consider the validity of the three questions, one after another.

10. On the first question, the learned Counsel for the petitioners submitted that when the orders passed or deemed to have been passed by the Special Deputy Commissioner under S. 95 of the Act according conversion have been quashed by this Court, the said order was binding on the Government and the Government did not have the power to pass an order stating that the orders which have been quashed by this Court shall continue to be in force. He submitted that this order, apart from being totally without jurisdiction, amounted to contempt of Court.

(ii) Sri Ashok Desai, learned Senior Counsel appearing for the 4th respondent and the learned Advocate General appearing for the State per contra contended that the Government proceeded to pass the order because the Division Bench of this Court while disposing of the appeal had permitted the Government to look into the matter and take a fresh decision.

(iii) We have pointed out earlier as to what is the scope of the liberty given. It is amazing that the Government has abused the liberty given by taking liberty to pass an order directing that the permission given under the orders which were quashed by this Court shall continue. It is high handed and arbitrary. The Government thereby has arrogated to itself a power to overrule the orders passed by the High Court, which power under the Constitution is only vested in the Supreme Court. The executive Government should have taken the liberty of nullifying the order of the High Court is most shocking and unfortunate. To put it in a nutshell no argument is necessary to make out a case for quashing the impugned order and no amount of arguments can save it. It is astonishing that after four decades of the functioning of the Government under Constitution, such a thing has happened. In this regard, it is necessary to set out the request made by the 4th respondent to the Government in their letter dated 20th May 1991 (Enclosure V to the Synopsis of the case filed by the 2nd respondent). Relevant portion reads :--

"Sir,

Ref :-- DLF Arkavati Green Valley Retreat Scheme.

In continuation of our letter dated 17th April 1991 addressed to you, while hoping that the Government is actively considering our fresh proposal we would like to bring the following to your study and incorporation in the Government order when a G.O. is being issued approving our proposal.

(a) Government may kindly issue an order for the continuance of the permission and conversion given by the Revenue Department in 1979-82 for conversion to non-agricultural purposes (Residential) (notwithstanding the orders passed by the Divisional Bench of the High Court W.A. No. 744 to 785 of 1987 c/w W.P. 13014/89 dated 28th Nov. 1990, but read in conjunction with Para 14 of the judgment)."

The 4th respondent could not have made such a request before the Government, and even if made the Government could not have granted it. But the Government conceded the request and has nullified the orders of this Court and restored the orders which were set aside by this Court. The Constitutional discipline demands that the Government must implicitly obey and give effect to the orders of this Court. This is the essence of Rule of Law. In this regard the conduct of the highest administrative authority i.e., the Government must be an ideal one which should be worthy of emulation by the lower authorities. It is very sad that the Government has set a very bad example by exceeding its power in a blatant manner, by going to the extent of nullifying the writs issued by this Court by ordering the continuance of the permission given by the Revenue Authorities in 1979-82 for using these agricultural lands for non-agricultural purpose (residential), which were quashed by this Court. Another facet of the arbitrariness of the order is, the Water Board had secured the order in its favour and against the 4th respondent at the hands of this Court, for the benefit of the residents of the City, and now the 4th respondent has obtained the impugned order from the Government; the effect of which is the order of this Court which had become final stands sabotaged and the Board is left in the lurch. In our opinion, this one ground is sufficient and justifies the allowing of the petitions with exemplary costs. We strongly deprecate the action of the Government in passing such an order. As regards the submission of the learned counsel that the Government has committed contempt of this Court by passing such an order, we do not consider it appropriate to express any opinion in these cases.

11. Coming to the second question, it should be pointed out that the power to accord permission for putting agricultural land for non-agricultural use has been designedly conferred by the Legislature on the Deputy Commissioner of the respective district, which expression includes the Special Deputy Commissioner and on no other authority higher or lower. Section 95 of the Act reads :--

"95. Uses of Agricultural Land and the Procedure for use of Agricultural Land for other Purpose :-- (1) Subject to any law for time being in force regarding erection of buildings or construction of wells or tanks, an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents, or other legal representatives, to erect farm buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose aforesaid.

(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 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.

(3) Permission to divert may be refused by the Deputy Commissioner on the ground that the diversion is likely to cause a public nuisance or that it is not in the interest of the general public or that the occupant is unable or unwilling to comply with the conditions that may be imposed under sub-sec, (4).

(4) Conditions may be imposed on diversion in order to secure the health, safety and convenience, and in the case of land which is to be used as building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of occupiers or are suitable to the locality and do not contravene the provisions of any law relating to town and country planning or the erection of buildings.

(5) Where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-sec. (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-sec. (2) shall be recognised unless it is made by the occupant.

(7) When any land assessed or held for the purpose of agriculture is permitted under sub-sec. (2) or deemed to have been permitted under sub-sec. (5) 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-sec. (2) of S. 83."

A reading of the Section itself would indicate the nature of the power conferred on the Deputy Commissioner and the precautions he has to take before according permission for conversion of agricultural lands for non-agricultural use. Sub-sec. (3) of S. 95 provides that the Deputy Commissioner has the power to refuse permission if it is not in public interest. Even in cases where permission is granted sub-sec. (4) of S. 95 authorises the Deputy Commissioner to impose stringent conditions to safeguard the interests of the general public. Under S. 49 of the Act, as held by this Court, any person genuinely aggrieved by the granting of permission for conversion to any other person is entitled to prefer an appeal to the Appellate Tribunal. Therefore, it is clear that the Government had no power to consider any request by the 4th respondent for according permission for conversion of agricultural land for non-agricultural use by passing the provisions of S. 95 and 49 of the Act.

12.(1) The only defense strongly put forward by the learned Advocate General and the learned Counsel for the 2nd respondent was that the Government could exercise the power under S. 95 of the Act in view of S. 3 of the Act, under which the Government is declared as the Chief Controlling Authority in all revenue matters. Section 3 reads :--

"3. Chief Controlling Authority in Revenue Matters :-- The State Government shall be the Chief Controlling Authority in all matters connected with land and land revenue administration under this Act.

The learned counsel submitted that as the State Government was the Chief Controlling Authority under the Act, it could pass an order which the Deputy Commissioner could pass under S. 95 of the Act. The learned counsel for the petitioners submitted that the above stand of the respondents is totally untenable. In support of this, the learned counsel relied on the judgment of the Supreme Court in State of Punjab v. Harikishan. That was a case which arose under the Punjab Cinema Regulation Act. Under S. 5 of that Act, the District Magistrate was empowered to issue Cinema licence and the State Government was only the Controlling Authority. In the guise of exercising the controlling power, the State Government itself exercised the power of the licensing authority. The question for consideration before the Supreme Court was, whether the Government could do so. The Supreme Court held it could not. Relevant portion of the judgment reads :--

"12. The question which we have to decide in the present appeal lies within a very narrow compass. What appellant No. 1 has done is to require the licensing authority to forward to it all applications received for grant of licenses, and it has assumed power and authority to deal with the said applications on the merits for itself in the first instance. Is Appellant No. 1 justified in assuming jurisdiction which has been conferred on the licensing authority by S. 5(1) and (2) of the Act? It is plain that S. 5(1) and (2) have conferred jurisdiction on the licensing authority to deal with applications for licences and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the licensing authority and dealt with under S. 5(1) and (2) of the Act. S. 5(3) provides for an appeal to appellant No. 1 where the licensing authority has refused to grant a licence and this provision clearly shows that appellant No. I is constituted into an appellate authority in cases where an application for licence is rejected by the licensing authority. The course adopted by appellant No. 1 in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate authority into the original authority itself, because S. 5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority.

13. It is, however, urged by Mr. Bishen Narain for the appellants that S. 5(2) confers very wide powers of control on appellant No. 1 and this power can take within its sweep the direction issued by appellant No. 1 that all applications for licences should be forwarded to it for disposal. It is true that S. 5(2) provides that the licensing authority may grant licences subject to the provisions of S. 5(1) and subject to the control" of the Government, and it may be conceded that the control of the Government subject to which the licensing authority has to function while exercising its power under S. 5(1) and (2), is very wide; but however wide this control may be, it cannot justify appellant No. I to completely oust the licensing authority and itself usurp his functions. The Legislature contemplates a licensing authority as distinct from the Government. It no doubt recognises that the licensing authority has to act under the control of the Government; but it is the licensing authority which has to act and not the Government itself. The result of

the instructions issued by appellate No. 1 is to change the statutory provision of S. 5(2) and obliterate the licensing authority from the Statute-book altogether. That, in our opinion is not justified by the provision as to the control of Government prescribed by S. 5(2)."

In our opinion, the ratio of the above decision is a complete answer to the stand taken by the State Government and the 4th respondent. The learned counsel for the 4th respondent relied on the judgment of the Supreme Court: in Kewal Krishan v. State of Punjab, in which at paragraph 30 the decisions in Harinarayan was distinguished. The question which arose in that case was under S. 23 of the Punjab Agricultural Produce Marketing Act, which expressly provided that subject to the Rules made by the State Government, the Committee could levy fees and therefore Rule 29 which conferred power on the Board was valid. In our opinion, the ratio of the said decision is not apposite to this case, for under S. 95 of the Act, power is conferred on the Deputy Commissioner, and therefore, the Government cannot as Chief Controlling Authority under S. 3 of the Act exercise the very statutory power which the statute has designedly conferred on the Deputy Commissioner and whose order is appealable to the Appellate Tribunal under S. 49 of the Act and not to the State Government. In this behalf, S. 8 of the Act, which provides for appointment of Deputy Commissioner is also significant. It reads :--

"8. Deputy Commissioner :-- (1) The State Government shall by notification appoint for each district a Deputy Commissioner, who shall be subordinate to the Divisional Commissioner.

(2) The Deputy Commissioner shall in his district exercise all the powers and discharge all the duties conferred and imposed on him under this Act or under any law for the time being in force. He may also exercise such powers and discharge such duties as are conferred and imposed on an Assistant Commissioner under this Act or under any other law for the time being in force, and in all matters not specially provided for by law, he shall act according to the instructions of the Slate Government."

As can be seen from the language of S. 8 the Deputy Commissioner is bound to follow only such instructions given by the State Government as the Chief Controlling Authority on matters which are not specifically provided for. This Section clearly indicate that the Government acting as Chief Controlling Authority can only supplement the provisions of the Act and the Rules by issuing instructions, but it cannot issue instructions which supplant the provisions of the Act.

(ii) In its latest decision in Bangalore Medical Trust v. B. S. Muddappa, , the Supreme Court has emphatically laid down that a general power conferred on the Government in any enactment to give directions for carrying out the purposes of that Act cannot be understood as enabling the Government to exercise the specific power conferred on a designated authority. In that case, facts were, an improvement scheme for Bangalore City was prepared by the Bangalore City Improvement Board, the Predecessor of the Bangalore Development Authority ('BDA' for short) constituted under the Bangalore Development Authority Act, 1976 ('BDA Act' for short). The scheme had been approved

by the Government. Under the scheme an area was ear-marked for a public park. Under S. 19(4) of the BDA Act, the power to make any modification by way of improvement in the scheme XXX vested in the BDA. Even so, the State Government made an order, converting the area of public park into a civic amenity site and that site was granted to the Bangalore Medical Trust. The grant was set aside by this Court. Before the Supreme Court the Government relied on S. 65 of the BDA Act, which empowered the State Government to give such directions to the BDA as it considers expedient to carry out the purposes of the Act, to sustain the exercise of the power conferred on BDA under S. 19(4) of that Act, by the Government. The contention of the Government was rejected. Relevant portion of the judgment reads (at pp. 1923-24 of AIR) :--

"52. Section 65 the over-all power reserved in Government to give such directions to the Authority as it considers expedient for carrying out any purpose of the Act was another provision relied to support an order which is otherwise unsupportable. An exercise of power which is ultra vires the provisions in the Statute cannot be attempted to be resuscitated on general powers reserved in a statute for its proper and effective implementation. The Section authorises the Government to issue directions to ensure that the provisions of law are obeyed and not to empower it itself to proceed contrary to law. What is not permitted by the Act to be done by the Authority cannot be assumed to be done by the State Government to render it legal. An illegality cannot be cured only because it was undertaken by the Government. The Section authorises the Government to issue directions to carry out purposes of the Act. That is the legislative mandate should be carried out. And not that the provision of law can be disregarded and ignored because what was done was being done by State Government and not the authority. An illegality or any action contrary to law does not become in accordance with law because it is done at the behest of the Chief Executive of the State. No one is above law. In a democracy what prevails is law and rule and not the height of the person exercising the power."

Earlier, at para 46, the Supreme said thus :--

"46..... Sadly the law was thrown to winds for a private purpose. The extract of the Chief Minister's order quoted in the letter of Chairman of the BDA leaves no doubt that the end result having been decided by the highest executive in the State the lower in order of hierarchy only followed with 'ifs' and 'buts' ending finally with resolution of BDA which was more or less a formality,"

The ratio of the above decision is a complete answer to the argument of the learned Advocate General and the learned counsel for respondent No. 4, based on S. 3 of the Land Revenue Act.

(iii) Further, as can be seen from the above extracts of the judgment, in the above case, the Supreme Court made a caustic remark against the Government to the effect that by doing so, it threw the law to the winds. But in this case, not only the law is thrown to the winds, but the writs issued by this Court also have been thrown to the winds; also, for a private purpose, namely, to help the 4th respondent and to the detriment of the interests of millions of people of the City of Bangalore. Therefore, the second question also has to

be answered in favour of the petitioners and on this ground also the impugned order is liable to be set aside.

13. The third question for consideration is, whether by the impugned order, the State Government has permitted the establishment of a new Township and if so, whether it is not invalid for not following the mandatory procedure prescribed under the Land Revenue Act. The learned counsel for the petitioners submitted that an examination of the new proposal would unmistakably indicate that the Government has allowed the formation of a new township. They submitted that there were only two important differences between the old and the new proposals. They are :--

(1) Instead of there being more than 700 houses, there would be only 270 houses and,

(2) Instead of there being an underground centralised sewerage system, there would be separate individual septic tanks with soil absorption system which according to the respondents has clearly avoided the hazard of pollution of the water in the river Arkavati by the discharge of sewerage water. The learned Counsel submitted that even the modified proposal was nothing but a new township, except that a number of houses would be less, the fact remains even then the number of houses would be as many as 270. They also submitted, once the new township is permitted large number of construction workers and servants would come and slums would come up and as of necessity number of shops and services would come into existence and there would be heavy movement of trucks carrying building materials and all this would clearly mean an establishment of a new township and that the Government without disclosing this truth has passed the order, though in truth the Government Order permits the establishment of a new township. They maintained that it is illegal and invalid for not complying with the mandatory procedure prescribed under the Land Revenue Act.

14. The learned Counsel for respondents 1 and 2, however, contended that the new proposal would not bring into existence a new township but there would be only 270 individual country villas and each of the villas will be attached to the existing revenue village, on the land of which the villa comes into existence. Learned Counsel, however, agreed that if the modified plan also brings into existence a new township, the Government ought to have followed the procedure prescribed under the Land Revenue Act. They, however, maintained that new plan does not bring into existence a new township.

15. We shall now, in the first instance proceed to consider as to whether the new proposal brings into existence a new township or no such township comes into existence. In fact, it was the duty of the Government to apply its mind to this aspect of the matter and to state clearly as to whether the modified plan does or does not bring into existence a new township. The Government has failed to do so. In order to find out the truth, all that is necessary is to refer to the modified plan, and the letters addressed by the 4th respondent to the Government. As can be seen from the modified plan, it provides for formation of 270 plots and for construction of 270 country villas. Instead of there being an underground sewerage system as common to all the houses, there would be separate

sewage disposal system for each house by way of construction of septic tanks according to the specification of ISI. But the fact remains it would be anew township. Further, as according to the modified plan, 270 houses are to be constructed as rightly pointed out by the learned counsel for the petitioners. Servants quarters have to be constructed. Large number of construction workers would come in and they would put up sheds in the vicinity. In the circumstances, as of necessity shops, restaurants and other services would be opened. Therefore, the stand of the respondents I and 4 that no new township would come into existence is not true. In fact, in the letter dated 20-10-1990 at page 320 of the Government records the 4th respondent has stated thus :--

"Dear Sir,

Sub :-- Formation of Township of DLF Universal Ltd. (DLF Arkavati Scheme Green Belt)

We have submitted the DLF Arkavati Green Valley Retreat Scheme as early as on 12th August 1985. The Government has fully examined the scheme as will be evident from the records and proceedings of the Government. This was in connection with the grant of conversion of agricultural area into non-agricultural i.e. for housing purpose. Thereafter, certain other suggestions were made, but the Government appears to have passed orders and they have not been communicated to us.

In this connection, we request the Government, as the matter is pending for the last several years, to kindly approve the scheme. We are prepared to abide by any conditions which the Government may deem fit to impose for approval of the Scheme and to see that there is no pollution of any kind. Our earlier letters and assurances contained therein, clearly prove the same.

Early orders are requested as we would be in a position to submmit the same to the Hon'ble High Court in the matter.

If necessary, we request that a personal hearing may kindly be given to us."

Again as on 20th May 1991 the 4th respondent in the letter addressed to the State Government (Enclosure V) stated thus :--

"(d) Town Planning :-- Our proposal submitted is in outline only, regarding the layout, roads and other facilities but with a firm commitment on 270 country villas being not exceeded. Therefore, any modifications to the layout, if found necessary, may be permitted in consultation with the Town Planning ., Authorities."

In the face of the contents of the modified plan and the above two letters, there is no merit in the submission made for the 1st and 4th respondents that no new township was being permitted.

We may also point out that the Special Deputy Commissioner, whose opinion with reference to the modified proposal was sought for by the Government also clearly understood that it was also for the establishing of a new township. This is evident from the said letter in which he has described the subject matter.

Relevant portion of the letter of the Deputy Commissioner reads :--

"No Aln. CR. (N) 2/83-84

Office of the Deputy Commissioner,
Bangalore District,
Bangalore,
Date : 10th May 1991.

To,

The Secretary to Government,
Revenue Department,
M. S. Buildings,

Bangalore.

Sir,

Sub :-- Proposal of M/s DLF Universal
Ltd., Delhi for formation of country
villa -- Township at Thippagonda-nahalli -- Reg.

xxx xxx xxx

Since the revised proposal is for establishing only 270 villas in about 414 acres of land the opinion of this office as under.

(1) In the instant case, the conversion already given by the Special Deputy Commissioner, Bangalore, has been set aside by the Hon'ble High Court since their earlier proposal was for establishing a Township consisting of nearly 700 sites. The present revised proposal is for establishing only 270 villas. This area is also outside the CDP, Planning Zone (also not under Green Belt) and purely from the Revenue Department point of view, I am of the opinion that there will be no objection to grant non-agricultural permission in this case, the earlier conversion orders will be reviewed if Government approach/sanction the revised proposal."

From the contents of the letter, it is clear that the Deputy Commissioner also understood that the modified proposal was for establishing a new Township and therefore he wanted the Government to take a decision as to whether a new township should be established and if the Government approved sanctioned the revised proposal, then he would review

the earlier orders of conversion. It is true that there was no question of the Deputy Commissioner reviewing the earlier orders of conversion, as they were quashed by this Court, and that he could consider only fresh applications if made under S. 95 of the Act. Whatever that may be, the letter indicates that the Deputy Commissioner was clearly of the view that question as to whether permission for conversion of agricultural land for residential purpose would have to be considered by him, after the Government gave sanction for the establishment of a new Township on the lines of the modified proposal. This view of the Deputy Commissioner is in accordance with the provisions of the Land Revenue Act and the decision of this Court in the petitions filed by the Water Board.

Therefore, on careful consideration of the material placed before us, we are of the view that the conclusion which is inevitable is that according to the modified plan also a new township would come into existence and that the plea of the 1st and the 4th respondents that according to the modified plan, there will be only 270 country villas on the land in question and it would not be a township, is more ingenious than convincing, intended to circumvent the provisions of the Land Revenue Act, to which we will be making reference in the succeeding paragraph.

16. Now, we proceed to examine as to whether the Government could have passed the order in the manner in which it has done. The definition of the word 'village' is found in S. 2(38) of the Land Revenue Act. It reads :--

"(38) "Village" means a local area which is recognised in the land records as a village for purpose of revenue administration and includes a town or city and all the land comprised within the limits of a village, town or city."

Sections 4, 5 and 6 of the Act which, inter alia, provides for division of the area of the State into villages and towns and the procedure for their alternation and for forming new village read :--

"4. State to be Divided into Divisions, Divisions into Districts and Districts to consist of Taluks comprising circles and Villages :-- (1) The State Government may, by notification determine the areas in the State which shall form a division and may by notification, alter the limits of or abolish the division so formed.

(2) Each division shall be divided into such districts with such limits, as may, by notification, be determined by the Stale Government.

(3) Each district determined under sub-sec. (2) shall consist of such taluks and each taluk shall consist of such circles and each circle shall consist of such villages as may, by notification, be determined by the State Government.

(4) The State Government may by notification alter the limits of any district, taluk or circle and may create new, or abolish existing districts, taluks or circles.

(5) The divisions, districts, taluks circles (by whatever name called) and villages as they exist immediately before the commencement of this Act, shall remain as they are for the purposes of this Act until altered by the State Government by notifications under sub-sees. (1), (2), (3) and (4).

5. Power of State Government to Alter Limits of or to Amalgamate or Constitute Villages :-- The State Government may subject to such conditions and in such manner as may be prescribed alter or add to the limits of any village or amalgamate two or more villages or constitute a new village for the purpose of this Act.

6. Procedure for Constitution, Abolition, etc., of Divisions, Districts, Taluks, Circles or Villages :-- Before the publication of any notification under S. 4 or 5 declaring any area to be a division, district, taluk, circle or village or altering the limits of any division, district, taluk, circle or village, or abolishing any division, district, taluk, circle or village, the State Government shall publish in the official gazette and in such other manner as may be prescribed, a notice of the proposal inviting objections and shall take into consideration any objections to such proposal."

As can be seen from these sections, the power to form a new village is vested in the State Government. Section 6 prescribes the mandatory procedure for declaring/forming a new village i.e., proposal should be published, objections should be invited and objections received to the proposal should be considered while taking a final decision. In the grounds though the petitioners have pleaded that the provisions of the Land Revenue Act were not complied with, Ss. 4, 5 and 6 are not relied upon. When the Sections were noticed at the time of hearing, the learned Counsel for the petitioners admitted that it was a lapse on his part in not specifically relying on these three Sections and in particular on Section 6. In the circumstances, we asked the learned counsel for the respondents to make their submissions with reference to Section 6 of the Act. The learned Counsel could not and did not say that S. 6 would not be attracted even if by the impugned order a new village/township was being brought into existence. Their argument, however, was that the modified proposal would not amount to formation of a new township. As found by us earlier on the basis of the material on record, the Government by granting approval to the modified proposal has permitted the formation of New Township and therefore it is liable to be struck down, for not following the mandatory procedure prescribed under S. 6 of the Act.

17. (i) It is significant to note that the impugned order does not even purport to be a notification u/S. 5 of the Act and it does not say under what provision of law the order was made. The Government could not do so, because there is no provision of law under which the Government could pass the impugned order.

(ii) Moreover, in the judgment rendered by the learned Judge on the Writ Petition filed by the Water Board, this Court had emphatically laid down that, establishing of a town ship, after following the mandatory provisions of the Land Revenue Act, was a condition precedent for invoking S. 95 of the Act. Despite this clear law laid down by this Court, to which the Government was also a party, the State Government has flouted the decision of

this Court, and has passed the impugned order. It is a settled position in law that flouting the law declared by the High Court or the Supreme Court, is more injurious to rule of law, than even disobedience of a specific order by the person to whom it is directed. On this aspect, the Supreme Court in the case of Barada Kanta Mishra v. B. Dixit, has observed as follows (at p. 2469 of AIR):

".....Just as the disobedience to a specific order of the Court under-mines the authority and dignity of the Court in a particular case, similarly any deliberate and *mala fide* conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the later conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law."

18. In the present case the Government has done both. It has flouted the order made in the case to which it and the Special Deputy Commissioner, Bangalore were parties by directing that orders which were quashed shall continue. It has also flouted the law declared by this Court to the effect that establishment of a Township after following the mandatory provisions of the Land Revenue Act was a condition precedent for the exercise of power under S. 95 of the Act. It is this deliberate and arbitrary action which has pained us most.

19. For the aforesaid reasons, we answer the third question also in favour of the petitioners. However, the glaring fact that the Government has thrown away the mandatory provisions of the Land Revenue Act including the orders of this Court, in which the mandatory requirements of the Law for establishing a new Township were expounded, to the winds, raises an important question I relating to the functioning of out Constitutional system viz., Whither are we leading to?

20. We shall now consider the fourth and the fifth contentions urged by the learned Counsel for the petitioners. Elaborating the fourth contention, the learned counsel for the petitioners submitted as follows :--

The injurious effect of the bringing into existence of the new township near Tippa-gondanahalli reservoir would be two fold; (1) depletion of water supply to the City of Bangalore as a consequence of the establishment of the 270 houses and the living of population of at least about 2000 - 3000 who have to depend for their water either on the Arkavati river or they have to draw water from the open or bore wells to be dug by them. As a consequence there will be depletion of water in the river. By drawing underground water from lower levels, the flow in the river gets adversely affected and there will be short supply of water to the reservoir. As far as this point is concerned, they rely upon the statement filed by the Water Board in the earlier case the relevant portion of which is summarised in the Judgment in BWSSB v. Kantha Chandra of this Court. It reads :

".....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-1 in each one of these petitions."

From the above paragraph, it is clear, the Water Board which is the statutory authority for supply of water to the City had taken the stand that the bringing into existence of a township in the locality results in depletion of water to the reservoir and consequently depletion of water supply to the City of Bangalore. In the statement of objections filed on behalf of the State and the 4th respondent no doubt the allegation is denied. But it should be pointed out that the water Board who filed earlier writ petition and succeeded, is a party respondent to these petitions and it has not filed any statement of objection. The learned Counsel for the petitioners submitted that the Water Board has not given consent for even the new colony and actually they were opposed to it, but as a decision has been taken by the State Government at the highest level to accord permission for the new colony, the Board is feeling helpless and thereby keeping quiet without placing the facts before this Court.

21. Having regard to the stand taken by the Water Board in the earlier case, it appears to us, the silence of the Board in not filing the statement is more eloquent. Their silence means they accept the case put forward by the petitioner. As the Water Board is the authority who is in possession of all the correct facts and it is silent, we have to proceed on the basis that the plea of the petitioner that there is bound to be depletion of water supply to the City of Bangalore, as a result of bringing into existence of the new township in the vicinity of Thippagondanahalli reservoir is true. Further, it may be seen from the impugned order, the Government has not at all discussed the question raised by the Water Board i.e., that by the coming into existence of a new Township there would be depletion of water in the river and reservoir. In the circumstances, we have gone through the original records produced by the learned Advocate General. The records disclose that before taking decision a Committee was constituted by the Government under the Chairmanship of S. Hanumantha Rao to consider the feasibility of according permission to the modified plan. Before the Committee the Water Board has expressed its opinion, which is extracted in the report of the Committee. It reads :

"The views of the BWS & SB and the DLF were also obtained at the meetings held. The main objection of BWS & SB to the proposed development were as follows :

(1) It would be humanly impossible to prevent the effluents from the septic tank after disposal on land for gardening, percolation in view of continuous application of effluents on the limited land at the disposal of the society.

(2) When a township is formed, it is likely that slums will come up the vicinity of the Township which will also be a source of contamination. This cannot be prevented as necessary amenities are not provided by the Township to these slum dwellers.

(3) The growth of the Township cannot be restricted and the Sub-division of the plots also cannot be prevented. These will naturally increase the effluents and the possibilities of polluting the River cannot be ruled out.

(4) The T. G. Hally Reservoir is one of the sources of water supply to Bangalore City covering a large population in the northern parts of the City and during acute scarcity condition of water supply any contamination of T.G. Hally Reservoir would further worsen the city water supply."

(Underlined by us)

This opinion was given in June, 1986, as the report was prepared in June 1986 (found at p. 87 of the records). Thus it may be seen even with reference to the modified proposal the Board expressed against according permission. The Committee however made the following recommendation :

"Finally, after detailed deliberations on the issues mentioned above, the recommendations of the committee are as follows :--

(1) that the development on the southern side in plots of not less than 1 acre restricting the total number of plots to 139 Nos. with the stipulation that each plot shall not have more than one house may be considered.

(2) The appropriate authorities may insist on correctly designed septic tanks followed by anaerobic contact filters and dispersion system like soak pits, absorption trenches and got complied with.

(3) Open shallow test wells of 3 to 4 Nos. may be constructed immediately adjoining the proposed development to monitor the teachings from under-ground sources to observe the quality of the ground water.

(4) That the proposed development should consist of only the number of plots as per para 1 and should not include any further development in future.

(5) The northern side development of 131 houses is not favoured by the committee on account of the terrain and the location lay-out as now proposed and any decision to be taken on the development on the northern side may be deferred till the development on the southern side is completed and closely observed.

(6) On the question of sub-division of the plots at a later stage and any development that may takes place consequently, other statutory authorities may look into and appropriate action may be taken, as this is strictly beyond the terms of reference to this committee."

But the fact remains the Water Board opposed the grant of permission and its specific stand was that there would be depletion of water is not contradicted in the report and the committee considered only from the pollution point of view, as it was constituted only to consider the pollution aspect.

22. Again after the judgment of the learned Judge, Chairman of the Water Board addressed a letter to the Secretary to Government, Urban Development Department on 1-6-1987. In the first paragraph of the letter the Chairman said as follows :

"The Thippagondanahally reservoir constructed across the River Arkavathy was supplying drinking water to the city of Bangalore till the implementation of the Cauvery Water Supply Scheme in the year 1975. Even now, this reservoir is supplying water to the 40% of the area, as the supply from the River Cauvery is wholly inadequate to" meet the City needs. This reservoir was constructed and commissioned in the year 1933 and it is under the control of the Bangalore Water Supply & Sewerage Board from the year 1964 after formation of the Board. Though the lake, and the apportionments thereto, all the pipelines come under the control of the Board, the catchment area is beyond its control."

23. Thereafter, the Chairman referred to the plans of the Society for formation of Township and the filing of the W.P. by the Board and the decision given by this Court in the W.P. The Chairman concluded the letter as follows :

"The copy of the judgment issued by the Hon'ble High Court of Karnataka is enclosed for reference.

In view of the above facts of the case, it is requested that the Government may issue orders prohibiting the formation of any township or conversion of land from agricultural into non-agricultural purpose within the vicinity of 5 miles from the foreshore of the Thippagondanahalli reservoir."

Thus it may be seen, the Water Board, the Statutory Authority constituted under an Act of Legislature for securing water supply to the City was totally against any township of conversion of land in the locality. Further, it was of the view that up to a distance of 5 miles (8 Kilometers) from the foreshore of Thip-pagondanahalli reservoir no township should be permitted. But the impugned order permits Township at a distance of two Kilometers. Therefore, we find considerable force in the contention of the petitioners that no permission should have been accorded to the 2nd respondent to form a new township on the 414 acres of land in question, consisting of 270 country villas, which would serve private interests and which carries with it considerable risk to public interest as depletion of drinking water supply to the City would certainly occur, whatever be its extent.

24. As far as the pollution aspect is concerned, respondents 1 to 3 pointed out that number of houses were drastically reduced from 700 to 270 and further the earlier plan of having a centralised underground sewerage system has been given up and separate septic tanks have been provided for to each of the houses, in accordance with the ISI, standard, and therefore there would be no chance of any pollution of water in the river. Further, the 4th respondent has plans to plant trees and convert the area into a green belt, which would improve the environment and rainfall. They also pointed out that the Pollution Control Board has after due consideration given clearance imposing stringent conditions which have been incorporated in the impugned order.

25. The material placed before us indicate that the Government has applied its mind to the water pollution aspect and has imposed conditions to ensure protection against pollution. Learned counsel for the petitioner, however, submitted that the decision on the pollution aspect was arbitrary and not on a thorough study of all aspects relating to pollution. On this point, learned counsel for the petitioner submitted that the Cabinet Sub-Committee constituted for the purpose had decided on 8-7-1987 to refer the matter to National Environmental Engineering Research Institute, Nagapur (Neeri) for its opinion but it was given up and it secured the consent of the State Pollution Control Board and passed the impugned order. Learned Counsel for the 1st and 4th respondents submitted that the Director and Scientist of Neeri visited T,G. Haiti in July, August, 1988, and thereafter as by letter 22-8-1988 they wanted 18 months to study and Rs. 20 lakhs for that purpose and they wanted to make a study at all other sources of water supply to the City, taking their opinion was considered impracticable and unnecessary.

26. In our opinion, both on the question of depletion of water as also pollution aspect, it is unnecessary for us to pursue the matter as in our opinion, these are matters with reference to which the petitioners and others are entitled to put forward their views of and when Government proposes to establish a new Township and invites objection to such proposal as required under S. 6 of the Land Revenue Act. When such a proposal is published the public are entitled to oppose on any ground. Therefore, we do not consider it necessary to pronounce upon this contention.

27. As part of the fourth contention the learned counsel for the petitioners submitted that :

(i) the magnitude of violation of law;

(ii) the nullifying of the order of this Court;

(iii) flouting of the law declared by this Court;

indulgence by the State Government in passing the impugned order coupled with the circumstance that all this has been done not for any public purpose, but only to benefit the 4th respondent in its commercial venture, and a few affluent individuals who alone would be in a position to purchase sites of note less than one acre in extent and construct villas, are sufficient to prove that the impugned order has been made on collateral consideration, namely, the influence brought to bear, on the Government by the 4th

respondent. As we have come to the conclusion, that what the Government has done is wholly illegal and therefore the impugned order is liable to be set aside, which is the relief sought for in the petitions, we consider it unnecessary to decide as to why the Government had done so.

28. As regards the various conditions imposed in the impugned Government Order calling upon the 4th respondent to impose those conditions in the documents by which the different plots would be sold to different individuals, the learned counsel submitted that those would be conditions which would be binding interpartes and was not sufficient to protect the interest of the general public. The learned Counsel submitted that the only way of ensuring that public interest is not adversely affected; even if the township is brought into existence in such a locality was that the conditions should be statutorily imposed either under the Planning Act or under any other special law and unless such conditions are imposed by law, the conditions in the order or in the sale deeds between the 4th respondent and the purchasers, would be of no consequence. We see considerable force in the contention, but again it is unnecessary for us to examine the same in detail, for the reason, the impugned order is liable to be quashed on the first three contentions urged by the learned Counsel for the petitioners.

29. Sri Ashok Desai, learned counsel for the 4th respondent questioned the locus standi of the petitioners to challenge the legality of the order of the Government in so far as it relates to S. 95 of the Land Revenue Act. The learned counsel did not dispute that the petitioners being residents of the City of Bangalore are vitally interested in ensuring that water in Thippagondanahalli was neither depleted nor polluted and therefore they were entitled to question the legality of the order. But he submitted they could do so only on the ground of depletion or pollution, but they had no right to challenge the legality of the order on other grounds. In support of this, the learned counsel relied on the Judgment of the Supreme Court in S.N. Rao v. State of Maharashtra, in which the Supreme Court at paragraph 19 has said thus :--

"19. The above grounds of challenge to the order of exemption granted to respondent-5 have all been considered by the High Court in its judgment disposing of the review applications. The petitioners have not challenged the judgment on review applications. The petitioners are only interested in seeing that sufficient area is kept reserved for a park or recreation ground for the benefit of the members of the public. They are not, in our opinion, concerned with the question as to the legality or otherwise of the exemption granted by the Government to respondent 5 under the Urban Land Ceiling Act."

Relying on the above observations, the learned Counsel for respondent-4 submitted that just as a member of the public has the *locus standi* for raising the question of environmental pollution but had no *locus standi* to challenge the exemption given to an individual from the provisions of the Urban Land Ceiling Act, petitioner cannot challenge the orders granting permission for the use of agricultural lands in question for constructing residential houses. He also relied on the Judgment of the Supreme Court in J. M. Desai v. Roshan Kumar, AIR 1976 SC 578, in support of the submission that the petitioners have no *locus standi*.

30. We find no merit in the objection. The ratio of the aforesaid decisions is not apposite to this case. It is now well settled that water is one of the essential requirement for enjoyment of life and therefore covered by the fundamental right under Article 21. Any impairment of that right gives a person cause of action as held by the Supreme Court in Subhash Kumar v. State of Bihar. When it is conceded that the petitioners being the residents of the City of Bangalore are vitally interested in ensuring that the water at Thippagondanahalli Reservoir is neither depleted nor polluted and it is their case that the granting permission for formation of a Township nearby coupled with the grant of permission for conversion of agricultural land for construction of as many as 270 houses, would affect the quality and quantity of water to the City of Bangalore, it cannot be said that the petitioners have no *locus standi* to challenge the legality of the impugned order on the ground of violation of Sections 6 and 95 of the Land Revenue Act. Further, the petitioners are also entitled to challenge the legality of the order, on the ground that the writ issued by this Court on the petition filed by the Water Board, which enures to the benefit of the residents of Bangalore, has been sent at naught in the impugned order and thereby Rule of Law is sought to be destroyed. If by any Governmental decision, the magnitude of illegality committed is such as would endanger the faith of the people in Rule of Law, which is a basic structure of our Constitution, it gives a cause of action to a citizen of the State concerned to challenge the legality of such a decision before this Court under Article 226, as held by this Court in Rudraiah Raju v. State of Karnataka, ILR 1986 Kant 587 at 618. Relevant portion of the Judgment reads :--

"11.....A citizen and a voter has sufficient interest to claim that the elected representatives and officers entrusted with the Governmental power under the Constitution and the laws should carry on the administration fairly and according to law and bona fide. In other words. Rule of Law being one of the basic structures of the Constitution, if it is breached, a citizen can seek redress in the Courts. The violation of rule of law is per se injurious to public interest."

In the appeal against the above Judgment of this Court the Supreme Court in Chatanaya Kumar v. State of Karnataka, while accepting the argument that in the guise of a public interest petitions no one should be allowed to indulge in wild and reckless allegations, rejected the argument that this Court should not have entertained or allowed the petitions and stated thus (at p. 831 of AIR) :

"The Court cannot close its eyes and persuade itself to uphold publicly mischievous executive actions which have been so exposed. When arbitrariness and perversion are writ large and brought out clearly, the Court cannot shirk its duty and refuse its writ. Advancement of the public interest and avoidance of the public mischief are the paramount considerations. As always, the Court is concerned with the balancing of interests, and we are satisfied that in the present case that the High Court had little option but to act as it did and it would have failed in its duty had it acted otherwise and refused to issue a writ on the ground that the allegation of personal bias against the Chief Minister was false. Had that been done the public mischief perpetrated would have been perpetuated. That is not what Courts are for."

The above observation hold good for this case as arbitrariness and perversion in passing the impugned order are writ large and the issuance of the writ sought for is necessary for advancement of public interest and avoidance of public mischief. Further, they are continuing the fight started by the Water Board for their benefit. Therefore, in our opinion, the petitioners have the necessary *locus standi* to question the legality of the impugned order.

31. It was also contended by the learned Counsel for the respondents that the petitions have been presented with political motive. Elaborating his contention, the learned counsel stated that the petitioner in W.P. No. 2285/ 1992 and the first petitioner in W.P. No. 23470/1991 were Ministers in the previous regime, when the revised proposal was submitted and they had no objection for the proposal and now they were challenging just because the orders were passed by the present Government. The learned Counsel also submitted that the petitioner in W.P. No. 2285/1982 was also a member of the Sub-Committee constituted for the purpose of examining the revised proposal which had recommended in favour of the proposal and this establishes his lack of bona fides. In support of his contention that a writ petition presented by a person for sub-serving his individual interest or out of grudge against the Government or the person in whose favour the Government had passed an order, in the guise of espousing a public cause, should not be entertained, the learned Counsel relied on the decision of the Supreme Court in Subhas Kumar v. State of Bihar and Chhetriya Pardhushan Mukti Sangarsha Samiti v. State of U.P..

32. (1) From the two decisions on which the learned Counsel for the 4th respondent relied, it is clear if personal grudge or enmity is the real reason for presenting a petition in the guise of espousing a public cause, such petitions must he discouraged and should be thrown out. Learned Counsel for the petitioners also did not dispute the said proposition. Sri G. V. Shantharaju, learned counsel for the petitioners in W.P. 2285/1992, however, strongly refuted the submission made by the learned Counsel for the 4th respondent. The learned Counsel submitted that the Government records produced would show that as a Minister, the petitioner had turned down the proposal recording reasons.

(ii) We have gone through the records. As submitted by the learned Counsel, the petitioner in W. P. No. 2285/1992 had turned down the modified proposal. The order passed by him found in the records at page 31832 reads :

"Earlier paras may kindly be perused. Litigation against grant of conversion from agricultural to non-agricultural is pending decision in our High Court.

DLF has plans to put housing colony on either side of Arkavati and this colony is about 1 / 2 Km. from the foreshore of the T.G. Halli Lake. When this Housing colony comes, it is impossible to prevent others from raising similar house building activity indiscriminately. Any care to use modern gadgets to control pollution will be of no avail, The entire T. H. Galli reservoir basin must be free from Housing activity to prevent pollution of lake water.

T. G. Halli is capable of supplying about 31 MGD to Bangalore, which is nearly 1 / 3 of the total supply of water today.

It is the duty of the Govt. to take all care and caution against attempts to pollute T. G. Halli lake water.

Nothing is greater than the interests of the people of Bangalore and in public interest, the request of the DLF to put up Housing Colony in the proposed area of the Arkavathi Basin, is rejected, as it will be a sure and permanent source of water pollution and health hazard to the citizens of Bangalore."

Subsequently, subsequent Cabinet has taken a different decision. Therefore, it is clear he has always been opposing the proposal. As stated in his petition in W.P. 2285/1992, who is a practising Advocate, has a long track of public service, as a Corporator, Legislator and a Minister.

(iii) Sri K. Channabasappa, learned Counsel for the petitioners in W.P, No. 23470/ 1991 has submitted that the first petitioner in the petition had been in public life for the last four decades and he had held important positions, in that, he was a Member of the Legislative Council, he was a Member of the Lok Sabha, and also he was a Minister of the State, and that he was interested in the welfare of the City of Bangalore and he has denied the allegation that he had filed the petition only for political gain and to get popularity. He also stated that he had not accorded any approval to the proposal. The learned Advocate General invited our attention to the note made by the fist petitioner on a letter written by the 4th respondent to the Government on 3-12-1984 to the effect that the revised proposal may be accepted. This note was made by the 1st petitioner on 29-12-1984. When this was brought to the notice of the learned Counsel, he submitted that it was long prior to the date on which the writ petition filed by the Water Board was allowed and at no time after the decision was given by this Court on the writ petitions filed by the Water Board he had supported the modified proposal. As far as the second petitioner is concerned, he was also a Member of the Legislative Council and is a Professor on the establishment of the Indian Institute of Management. Learned counsel submitted that both the petitioners had presented the petition with a public spirit in the interest of the general public of the City. As far as the three petitioners in W.P. No. 24877/1991, Sri K. Channabasappa, learned Counsel, who appeared on behalf of their learned Counsel submitted that first petitioner in that petition was a Doctor, the second was a Professor and the third was a citizen and resident of the City and they had presented the petition in public interest and they were not espousing any private cause and nothing is said against them.

33. After hearing the learned Counsel on both sides, on the point, we find that the allegation of want of bona fides or political motive, against the petitioner in W. P. No. 2285/1992 and the first petitioner in W.P. No. 23470/1991 is without any basis. Having regard to their long record of public service, there is nothing unusual, in their fighting for a cause of such great public importance concerning water, a basic need of the residents of the City. We are satisfied that these two petitioners as well as the other four petitioners

have all approached this Court espousing the said public cause. In fact, the trouble taken by them in espousing such a public cause and exposing the arbitrary Governmental action of nullifying the writ issued by this Court, should be commended and not condemned. On this aspect of the matter, it is appropriate to refer to the observation made by the Supreme Court in the case of Muddappa, which was also a petition presented by the citizens and residents of the City challenging the legality of the grant of a piece of land which was reserved for a public park in favour of a Private Medical Trust for construction of a Hospital. In that case upholding the *locus standi* of B. S. Muddappa and others, the Supreme Court stated thus (at p. 1915 of AIR) :

"The rise in exercise of power by the executive and comparative decline in proper and effective administrative guidance is forcing citizens to espouse challenges with public interest flavour. It is too late in the day, therefore to claim that petition filed by inhabitants of a locality whose" park was converted into a nursing home had no cause to invoke equity jurisdiction of the High Court. In fact public spirited citizens having faith in rule of law arc rendering great social and legal service by espousing cause of public nature."

In our opinion, the above observations apply with greater force to the present case, as in the present case what the petitioners are challenging is the order of the State Government which permits the bringing into existence of a new township in the vicinity of Thipagondanalialli Reservior which is a major source of supply of drinking water to the lakhs of citizens of City of Bangalore on the ground that it is highly injurious to public interest and that it is made in flagrant violation of law and the orders of this Court. Therefore, we find no merit in the objections raised by the learned Counsel for the 1st and 4th respondents as to the *locus standi* or bona fides of the petitioners in presenting the petitions.

34. The next contention of the petitioners is based on Sections 79-A and 79-B of the Land Reforms Act.

Section 79-A of the Act which came into force with effect from 1-3-1974, prohibited purchase of Agricultural Lands by those who were having non-agricultural income of more than Rs. 12,000/- and if purchased such purchase shall be null and void and such land shall be forfeited to the Government.

35. The learned Counsel for the 2nd respondent submitted that the purchase by every one of the 42 persons of different bits of lands in question was prior to 1st March, 1974, on which date Section 79-A came into force. Though this statement has been specifically made in the statement of objections, the petitioners are not in a position to state anything to the contrary. Therefore, we have to hold that there has been no violation of Section 79-A of the Act.

36. The next submission of the learned Counsel for the petitioners was, purchases by Respondent 4, which were on dates subsequent to 1-3-1974 were void.

Section 79-B of the Act reads :

79-B. Prohibition of holding agricultural land by certain persons,--

(1) With effect on and from the date of commencement of the Amendment Act. except as otherwise provided in this Act,

(a) no person other than a person cultivating land personally shall be entitled to hold land; and

(b) it shall not be lawful for.

(i) an educational, religious or charitable institution or society or trust referred to in sub-section (7) of Section 63, capable of hold- ding property;

(ii) accompany;

(iii) an association or other body of individuals not being a joint family, whether incorporated or not; or

(iv) a co-operative society other than a cooperative farm, to hold any land.

(2) Every such institution, society, trust, company, association, body or co-operative society,-

(a) which holds lands on the date of commencement of the Amendment Act and which is disentitled to hold lands under sub-section(1), shall, within ninety days from the said date, furnish to the Tahsildar within whose jurisdiction the greater part of such land is situated a declaration containing the particulars of such land and such other particulars as may be prescribed; and

(b) which acquires such land after the said date shall also furnish a similar declaration within the prescribed period.

(3) The Tahsildar shall, on receipt of the declaration under sub-section (2) and after such enquiry as may be prescribed, send a statement containing the prescribed particulars relating to such land to the Deputy Commissioner who shall, by notification, declare that such land shall vest in the State Government free from all encumbrances and take possession thereof in the prescribed manner."

Relying on the above Section learned Counsel submitted that the purchase of 414 acres of agricultural land by the 2nd respondent was void and the Revenue Officer ought to have taken steps for the forfeiture of the land to the Government in which event question of granting permission to the 2nd respondent does not arise.

37. Learned Counsel for the 2nd respondent per contra submitted that the 2nd respondent purchased the lands in question only after the Deputy Commissioner had accorded conversion for non-agricultural use and therefore the provisions of S. 79-B of the Act was not attracted.

38. On fact, the petitioners have not disputed that the lands were purchased after the Special Deputy Commissioner had accorded permission under Section 95 of the Act and before the said orders were quashed by this Court. The learned Counsel for the petitioners, however, submitted once the order granting conversion for non-agricultural use was set aside, the status of the land became that of agricultural land even as on the date of purchase and therefore the revenue officers were bound to take action as provided in Section 79-B of the Act.

39. There is considerable force in the submission. Obviously this must be the reason for securing an order from the Government that permission continues, so that the 2nd respondent could take the stand that Section 79-B is not attracted. But as held earlier once the orders according permission for conversion were quashed, and it became final, it can no longer be contended that the lands were non-agricultural lands. Though the impugned order purports to continue the permission, as held by us it is invalid, as Government has no power to nullify the order of this Court. However, we are of the view the relief based on Section 79-B, for forfeiting the lands to the Government is not germane to this petition.

40. To sum up, our conclusions are :--

(1) The impugned order is arbitrary and high-handed, as by the impugned order, the Government has directed that the very orders of the Deputy Commissioner which were quashed by this Court shall continue.

(2) Even on the basis that by the impugned order, the Government accorded fresh permission for conversion of 414 acres of land for non-agricultural use the same is without the authority of law as that power is conferred on the Deputy Commissioner under Section 95 of the Act.

(3) By the impugned order, in truth and in substance, the Government has permitted the bringing into existence a new village and as the mandatory procedure prescribed under Section 6 of the Land Revenue Act has not been followed, it is liable to be set aside.

41. At paragraph 18 of this order we have strongly deprecated the action of the Government in nullifying the orders passed by this Court quashing the order of the Special Deputy Commissioner and we have said that this one ground is sufficient to allow the writ petition with exemplary costs. At paragraph 17 we have also pointed out the disastrous effect of the Government flouting the law declared by this Court to the effect that formation of a new Township after following the mandatory procedure prescribed under the Land Revenue Act was condition precedent for the exercise of the power under Section 95 of the Act. Ordinarily we do not award costs in Writ Petitions. But these are

extraordinary cases justifying the award of exemplary costs. There has been one such precedent. On an earlier occasion, when orders passed by a Division Bench of this Court were not nullified by the persons who failed before this Court by approaching Inams Abolition Deputy Commissioner praying for occupancy rights for the very lands which had been rejected, this Court imposed Rs. 10,000/- as exemplary costs. This order was confirmed by a Division Bench of this Court in Writ Appeal and Special Leave Petitions filed before the Supreme Court were rejected. What happened in that case is set out in the judgment of this Court in Dharmarayaswamy Temple v. Chinnathayappa, ILR (1990) Kant 4242 at p. 4258 para 3 when the matter came to this Court once again against the order of the Land Tribunal. The relevant paragraph reads :

"3. After the matter was decided finally by this Court, strangely respondents 1, 4 and 6 filed fresh applications before the Special Deputy Commissioner for Inams Abolition claiming occupancy rights in respect of the very land in respect of which there was an earlier order by the Special Deputy Commissioner rejecting the occupancy rights. The Special Deputy Commissioner, behind the back of the petitioner temple granted occupancy rights in favour of respondents 1, 4 and 6 in respect of portions of lands in respect of Sy. No. 79 by his order dated 22-12-1975. On coming to know of the said order, the petitioner-temple preferred appeals before the Karnataka Appellate Tribunal. The Tribunal disregarding the order of the Division Bench of this Court in the Writ Petitions, rejected the appeals of the petitioner-temple, Aggrieved by the said order of the Appellate Tribunal the Temple presented Writ Petitions Nos. 8791 to 8793 of 1978. These Writ Petitions were allowed by this Court holding that after the matter stood concluded by a Division Bench decision of this Court it was a clear case of abuse of the process of the Court by Respondents 1, 4 and 6 to have moved the Special Deputy Commissioner for the second time for grant of occupancy rights under the same Act, in respect of the same land in respect of which their claim had been rejected and the matter had become final by the Division Bench decision of this Court imposing exemplary costs of Rs. 10,000/- on each of the three respondents viz., Respondents 1, 4 and 6 in those Writ Petitions. Aggrieved by the said Order, the three respondents preferred Writ Appeals Nos. 283 to 285 of 1988 before this Court. They were dismissed by a Division Bench of this Court on 9-2-1988. Against the said order, respondents 1, 4 and 6 preferred Special Leave Petitions Nos. 10278, 10278-A and 10278-B of 1988 before the Supreme Court. The Special Leave Petitions were also dismissed on 12-10-1988."

(Underlined by us)

We are constrained to say that this is a much more glaring case because by the impugned order not only the order of this Court is nullified but also the law declared by this Court is flouted. Further, the aggravating circumstance in this case is the Government was moved to issue an order for the continuance of the permission granted in 1979-82 for residential use of the agricultural land in question, notwithstanding the order passed by this Court quashing them, not by any ignorant individual, but by the 4th respondent, a Company registered under the Companies Act and the order is passed by the Government and not by any Subordinate Officer. The result is the order of this Court is nullified by an executive order and thereby authority and dignity of this Court is undermined and the rule

of law is defeated. Therefore, we are of the view that there is every justification to impose exemplary costs as imposed in those cases.

41. In the result, we make the following order :

(i) Writ Petitions are allowed with exemplary costs of Rs. 10,000/- in each of the petitions payable to the petitioners by the State Government and the DLF Universal Ltd. in equal proportion.

(ii) The impugned order of the Government dated 29-6-1991 is set aside.

42. Order accordingly.