

M/S. DLF UNIVERSAL LTD.

v.

PROF. A. LAKSHMI SAGAR AND ORS. ETC.

SEPTEMBER 2, 1998

[M.M. PUNCHI, CJ, S.C. AGRAWAL AND A.P. MISRA, JJ.]

Karnataka Land Revenue Act, 1964—Sections 6, 95—Conversion of agricultural land for non-agricultural use—Grant of permission—Power and procedure—Scheme for construction of villas—Power to grant approval conferred on Deputy Commissioner—Diversion of use sought in respect of large number of plots of land—Whether State Government was competent to exercise power u/s 95—Held, Yes—Whether State Government was required to follow procedure laid down in sec. 6 before passing order approving the scheme—Held, No.

Constitution of India, 1950—Art. 226—Public interest litigation—Scheme for construction of villas on bank of river—Grant of permission for conversion of agricultural land for non agricultural uses—Challenged—Whether construction of township on bank of the river would adversely affect quantity and quality of water to city of Bangalore—Held, No.

The appellant submitted a proposal for a scheme of developing a garden colony of 270 country type plots of one acre or more having a villa each. After taking into consideration the views expressed by various authorities, the State Government granted the sanction. The petitioners, residents of the city of Bangalore filed Writ petitions by way of public interest litigation challenging the order of the State Government on the ground that construction of township on the banks of Arkavati River will affect both the quality and quantity of water in the river which would be injurious to the interests of the people residing in the city of Bangalore. Allowing the writ petitions, the High Court set aside the order passed by the State Government. Hence these appeals. The issues raised for consideration were (i) whether in passing the order giving its approval to the proposed scheme has the State Government kept in view the interest of the Public in the matter of pollution of the water of the river and water reservoirs and the availability of supply of water to the city of Bangalore; and (ii) whether the approval of the proposed scheme by the State Govern-

A ment suffers from an infirmity justifying interference by the court in exercise of its power of judicial review.

Allowing the appeals, this Court

B HELD : 1. In the matter of pollution of the waters the order of the State Government takes note that the revised scheme submitted by DLF involves construction of individual septic tanks coupled with soil absorption system with dispersion trenches and that the effluent water will be used for gardening, etc. Under the scheme each country villa will have a septic tank coupled with soil absorption system and each septic tank will cater for C 15 users and the septic tanks will be located at a minimum distance of 100 mtrs. away from the river line. The order shows that reference had also been made to the Karnataka State Pollution Control Board, and the Board in its reply had stated that the proposal of DLF may be approved subject to the conditions set out in the said letter. The State Government arrived at the D decision to grant approval to the proposed scheme of DLF keeping in view the said conditions indicated by Karnataka State Pollution Control Board and in the order granting permission, it is provided that DLF shall stipulate in each sale/lease deed (to be registered), while selling the plots/country, that each buyer of the site/country villas shall strictly abide by the pollution control devices recommended by the Karnataka State Pollution Control E Board and that the said Board will have the right to inspect and satisfy itself with the compliance of the measures and, in case of any violation, the said Board shall take action as per rules against the violator(s). This would show that while granting permission the State Government has kept in view the danger of pollution of water of river Arkavati and Thippagondanajally F water reservoir and has taken adequate precautions against the possibility of such pollution by imposing strict conditions as laid down by the State Pollution Control Board in that regard. While granting approval to the proposed scheme of DLF the State Government has also directed that any monitoring by peasemeters may be undertaken directly by the State Pollution Control Board and Water Supply and Sewerage Board independently G of DLF. [350-A-C; 361-B-E]

1.2. The order granting permission shows that it was passed after the State Government has taken into consideration all the relevant factors and approval was given to the proposed scheme after the State Government was H satisfied that the proposed scheme will not effect the availability of water

for supply to the city of Bangalore and had also prevented the possibility of pollution of waters of river Arkavati and Thippagondanahally Water reservoir by laying conditions. [353-D-E] A

1.3. Grant of approval to the proposed scheme does not amount to declaring the said area as a new village or the alteration of the area of an existing village. The question whether the colony which comes into existence under the scheme as proposed is to be declared to be a new village or is to be included in an existing village will have to be considered after the development takes place as proposed in the scheme and at that stage the requirements of section 6 of the Karnataka Land Revenue Act may have to be complied with. Therefore, the High Court was not justified in holding that the State Government was required to follow the procedure laid down in section 6 of the Land Revenue Act before passing the order approving the proposed scheme. [355-B-D] B C

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 4546-48 of 1992 Etc. D

From the Judgment and Order dated 24.4.92 of the Karnataka High Court in W.P. Nos. 2285/92, 23470 and 24877 of 1991.

C.A. Nos. 4543-45/92 and I.A. Nos. 1-42 in SLP (C) No. 10914-55/1991. E

Kapil Sibal, S.S. Javeli, Ms. Veerappa, Kh. Nobin Singh, Ravinder Narain, S. Sukumaran, Sanjiv Sen, Ratanesh, Ms. Deepa Rathore, Ms. Neeti Dixit, P.R. Ramasesh, K.R. Nagaraja and K.K. Tyagi for the appearing parties.

The Judgment of the Court was delivered by F

S.C. AGRAWAL, J. Civil Appeals Nos. 4546-48/92 and Civil Appeals Nos. 4543-45/1992

These appeals arise out of three writ petitions filed by way of public interest litigation in the Karnataka High Court to challenge the order dated June 29, 1991 passed by the Government of Karnataka approving the scheme framed by M/s D.L.F. Universal Limited [for short "DLF"] for development of 270 sites for country villas in Tavarekere Hobli, Bangalore South Taluk, Bangalore District. By its judgment dated April 24, 1992 the High Court, while allowing the said writ petitions has set aside the said H

A order of the State Government dated June 29, 1991.

B During the period 1972-76, forty-two serving and retired members of the Indian defence Forces individually purchased lands admeasuring about 414 acres in Magadi Taluk of Bangalore Rural District. The owners of these lands formed themselves into a cooperative society called "the Arkavati Progressive Farmers Cooperative Society" [hereinafter referred to as 'the Cooperative Society']. In 1979 the said land owners submitted applications before the Special Deputy Commissioner, Bangalore Rural District, for permission to divert their lands to non-agricultural purposes under Section 95 of the Karnataka Land Revenue Act, 1964 [hereinafter referred to as "the Land Revenue Act"]. The Special Deputy commissioner, C after obtaining the views of the Director (Town Planning), passed orders in May, June and July 1979 in some of those cases according sanction for diversion of the lands for non-agricultural/industrial/residential purposes subject to the conditions mentioned in those orders. In other cases the D Special Deputy Commissioner either did not communicate the order rejecting the request for permission or did not pass any kind of order for a period of four months from the date of application filed by the different holders with the result that in all such cases permission sought was deemed to have been granted under Section 95(5) of the Land Revenue Act. The Bangalore Water Supply and Sewerage Board [hereinafter referred to as E "the Water Supply and Sewerage Board"] filed appeals against the said orders/deemed orders of the Special Deputy Commissioner before the Karnataka Appellate Tribunal [hereinafter referred to as "the Tribunal"] under section 49 of the Act. The said appeals were dismissed by the Tribunal by its judgment dated August 13, 1981. After the passing of the said order of the Tribunal dated August 13, 1981 the owners whose F applications had been rejected earlier and those who did not receive the orders on their applications regarding conversion filed fresh applications before the Special Deputy Commissioner and the Special Deputy Commissioner by his orders dated March 27, 1982 granted permission for conversion under Section 95 to those applicants also. Feeling aggrieved by the said judgment of the Tribunal as well as the orders dated March 27, 1982 G passed by the Special Deputy Commissioner, the Water Supply and Sewerage Board filed writ petitions [W.P.Nos. 19919-19954 of 82 and 21172- 21177 of 82] before the Karnataka High Court. In the meanwhile the lands of the individual owners were purchased by DLF and it got itself impleaded as respondent in those writ petitions. The said writ petitions H were allowed by a learned Single Judge of the High Court by his judgment

dated April 27, 1987 whereby the order of the Tribunal dated August 13, 1981 as well as the orders dated March 27, 1982 passed by the Special Deputy Commissioner were quashed on the view that having regard to the provisions contained in the Karnataka Town & Country Planning Act, 1961 [hereinafter referred to as "the Planning Act"] and Section 148 of the Land Revenue Act for a change in land use for the purpose of establishing a new village or township or city, as the case may be, the State Government must first take a decision as to whether a new village or township or city should be raised in a particular area and if it decides that in a particular area a new village or township or city should be raised it has to issue a notification declaring that area as the local planning area for the purpose of the Planning Act and thereafter further steps in accordance with the provisions of the Planning Act had to be taken and it is only on complying with these provisions the permission for conversion of agricultural lands for non-agricultural purposes under Section 95 of the Act can be sought and obtained in the case of establishment of a new township. It was held that it is a case where large tract of agricultural land is being used for raising a new township and this was a matter which lies within the exclusive decision of the State Government and it is the State Government which has to decide and select the area for location of new village, township or city, as the case may be.

Writ Appeals Nos. 744-785 of 87 filed against the said judgment of the learned Single Judge were dismissed by the Division Bench of the High Court by judgment dated November 28, 1990. Agreeing with the views of the learned Single Judge the learned Judges held that the State Government must first take a decision as to whether a new village or township or city should be raised in a particular area and if it decides to do so it has to issue a notification declaring that area as the local planning area and the necessary steps ought to follow and thereafter a notification under Section 148(1) of the Land Revenue Act could be issued and it is only thereafter the question of converting an agricultural land into non-agricultural purposes under Section 95 of the Act would arise. The learned Judges of the Division Bench of the High Court, while dismissing the appeals, observed:-

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

A At this stage it may be mentioned that while the aforementioned writ petitions were pending before the learned Single Judge a revised scheme, DLF Arkavati Green Valley Retreat Scheme, was submitted by DLF before the Government of Karnataka on December 1, 1984. The original proposal of the owners of the plots who were seeking conversion was for construction of 770 farm houses. In the revised scheme submitted by DLF
 B the proposal was for developing a garden colony of 270 country type plots of one acre or more having a villa each. The said revised proposal was under consideration before the State Government during the pendency of the writ petitions before the learned Single Judge and the writ appeals before the Division Bench of the High Court and the fact that such a
 C revised proposal had been made by DLF had also been brought to the notice of the Division Bench of the High Court by DLF by submitting an application in the writ appeals.

After the decision of the Division Bench of the High Court dated
 D November 28, 1990 the said revised scheme submitted by DLF was considered by the State Government in the Department of Housing and Urban Development. The Karnataka State Pollution Control Board, the Director (Town Planning) and the Secretary to the Government of Karnataka, Revenue Department were also asked to examine and furnish their views on the revised proposal submitted by DLF. The Secretary to the Govern-
 E ment of Karnataka, Revenue Department, referred the matter to the Special Deputy Commissioner, who, by his letter dated May 10, 1991, communicated his views as under:-

"In the instant case, the conversion already given by the Special
 F 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
 G opinion that there will be no objection to grant non-agricultural permission in this case, the earlier conversion orders will be reviewed if Government approve/sanction the revised proposal."

The Secretary to the Government of Karnataka, Revenue Department, by
 H his letter dated May 14, 1991 informed the Department of Housing &

Urban Development about the views referred in the detailed report furnished by the Special Deputy Commissioner, Bangalore, on May 10, 1991 and expressed his views as under:-

"Considering all the aspects, the Revenue Department is of the opinion that the conversions already granted shall continue and orders if any required in this regard would be issued immediately after the decision to permit this new proposal in totality by the HUD Dept. is made known to us. I am sure HUD could be separately looking into the matters concerning pollution feared by the BWS&SB."

The Karnataka State Pollution Control Board by their letter dated May 13, 1991, addressed to the Secretary to the Government of Karnataka Housing & Urban Development, expressed the view that the revised proposal submitted by DLF may be approved subject to the conditions as indicated in the said letter. The Director (Town Planning) in his letter dated May 17, 1991 sent his note considering the various aspects. After taking into consideration the views expressed by the authorities aforementioned the State Government passed the order dated June 29, 1991 which reads as under:-

"PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA

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

Read : (i) Proposal dt. 12.8.1985 from M/s DLF Ltd., New
Delhi

(ii) Letter dt. 20.8.1991 from M/s DLF Ltd.

(iii) U.O. Note No. RO 91 LGB 91 dt. 14.5.1991
from the Secretary to Government, Revenue
Department.

(iv) Letter No. TP/AD2/ISSC/Dev/91-92 dt. 17.5.91
from the Director of Town Planning.

(v) Letter No. BMRAD/EC/319/91-92 dt. 18.5.91 from
the Metropolitan Commissioner, BMRAD,
Bangalore.

A Preamble:- M/s DLF Universal Limited alongwith its As-
sociated 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,
B 93/2,93/3,109/3 and 109/4 in Gangannahalli Village, 37/5 in Kur-
Bubarahalli Village, 7 to 11, 13, and 14 in Varathur Village and 1
to 31 in Varthur Narasimhapura Village all in Taverekere Hobli,
Bangalore South Taluk, Bangalore District, on the both sides of
River Arkavathi originally for the purpose of formation of residen-
tial colony under the name of M/s DLF Arkavathi Green Valley
C Retreat Scheme with Central Sewerage System. The Bangalore
Water Supply and Sewerage Board vide its letter dt. 2.1.85 had
suggested to the Government to examine the entire matter. In the
meanwhile, M/s DLF Universal Limited has submitted revised
D proposal on 12/13.8.85 stating that the new system involves con-
struction 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
E buyers of the Sites/plots and by M/s DLF Universal Limited. 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
F effluent, the revised proposal entails that each country villa will
have septic tank coupled with soil absorption system. Each septic
tank will cater for 15 users and the septic tanks will be located at
a minimum distance of 100 meters away from 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
G from Bore-Wells and open wells. The garden colony will have
extensive tree plantings which will improve the ecology of the
whole area. The then Hon'ble Chief Minister visited the spot
alongwith the then Chief Secretary, Secretary to Chief Minister
and Minister for Housing & Urban Development Department on
H 12th August, 1985. Subsequently, the government had constituted
an expert committee to consider the matter and also later on the

recommendations 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 W.P. No. 19919 to 19954 and 21172 to 21177 of 1982 quashed the Order of the Karnataka Appellate Tribunal dated 13.8.81, by which the permission given by the Revenue Department for conversion from agriculture to non-agriculture purpose has been upheld etc., 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 dt. 28.11.1990 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 Secy. to Govt. in the Revenue Department, the Director of Town Planning, BMRDA and the Karnataka State Pollution Control Board etc. The Karnataka State Pollution Board has sent its reply vide its letter dt. 13.5.1991 stating 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 Thippagon-danahally Reservoir, all precautions are required to be taken so that there will not be any direct or indirect entry of sewerage effluent 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 tank, 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

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A following scientific method for which records must be maintained and produced for verification by Karnataka State Pollution Control Board.

B (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.

C (vi) Peasemeters 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 leached to either river or reservoir.

D (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.

E These recommendations/conditions of the Karnataka State Pollution Control Board, alongwith the opinion received from others and also taking into consideration an overall view of the entire matter and the letter dt. 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 MRI 84, BANGALORE

F *DATED 29TH JUNE 1991.*

G (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 measure and in case of any violation, the Pollution Control Board shall take action as per rules against the violator(s).

H (B) Government hereby ordered for continuance of the permission given for a conversion by the Revenue Department in 1979-82 for

converting these lands to non-agricultural purpose (residential). A

(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. B C

(E) The revised present proposals dt. 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. D E

BY ORDER AND IN THE NAME OF THE
GOVERNOR OF KARNATAKA F

(H.K. SAMPANGIRAMAIAH)
Under Secretary to Government,
Housing & Urban Development Department."

The said order dated June 29, 1991 was challenged by the petitioners in the three writ petitions which were filed by way of public interest litigation on the ground that by allowing a township to come up on the banks of Arkavati River by construction of 270 country villas both the quality and quantity of water in the river and the water reservoir constructed at Thippagondanahally across the river Arkavati, which is one of H G

A the main sources for supply of water to the city of Bangalore, would be adversely affected which would be injurious to the interests of the people residing in the city of Bangalore and that not only there would be depletion in supply of water but also there is every chance of pollution of water. The following contentions were urged by the petitioners in support of their writ petitions before the High Court:-

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

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

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(3) Though the clear pronouncement of the High 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 Planning Act, question of exercise of power under Section 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 the High Court.

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(4) The impugned order is totally arbitrary and violative of Articles 14 and 21 of the Constitution, as it adversely affect 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.

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(5) Though by the force of Section 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. A

The first three contentions have found favour with the learned Judges of the High Court and, accepting the said contentions, the High Court has set aside the order dated June 29, 1991 and the said writ petitions have been allowed by the impugned judgment of the High Court. B

Civil Appeals Nos. 4543-4545 of 1992 have been filed by the State of Karnataka, while Civil Appeals Nos. 4546-4548 of 1992 have been filed by DLF against the said judgment of the High Court. The State of Karnataka has, however, filed I.A. Nos. 4-6 seeking permission to withdraw the appeals. The said applications are allowed and Civil Appeals Nos. 4543-4545 of 1992 filed by the State are dismissed as withdrawn. C

Shri Kapil Sibal, the learned senior counsel appearing for DLF, has urged that the High Court was in error in proceeding on the basis that the revised scheme submitted by DLF was for establishing a new township and that by order dated June 29, 1991 permission had been granted for establishment of a new township. It has been urged that under the revised scheme what is proposed is to construct about 270 villas over plots measuring one acre or more each and that the construction of 270 villas on plot of one acre each cannot be regarded as establishing a township. The proposed scheme was really a scheme for conversion of agricultural land for use for non-agricultural purposes, namely, residential purposes and it was required to be considered only under Section 95 of the Land Revenue Act and that the High Court was not right in holding that the State Government was required to follow the procedure laid down in Sections 4, 5 and 6 of the Land Revenue Act. As regards the exercise of power under Section 95 of the Land Revenue Act, the submission of Shri Sibal is that one has to look at the substance of the matter and if it is considered in that light it would be evident that the matter relating to grant of approval for diversion of agricultural land for use for other purposes under Section 95 has been considered by the Special Deputy Commissioner since, in his communication dated May 10, 1991, addressed to the Secretary, Government of Karnataka Revenue Department, the Special Deputy Commissioner had expressed the view that from the revenue point of view in his opinion there was no objection to grant of permission for conversion to non-agricultural purposes. Shri Sibal has contended that although techni- D
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A cally speaking the order for continuing of the permission earlier granted could not be passed in view of the judgments of the learned Single Judge of the High Court as well as the Division Bench of the High Court in the earlier writ petitions filed by the Water Supply and Sewerage Board whereby the orders granting approval for such conversion had been

B quashed but, in substance, the order dated June 29, 1991 is an order for fresh grant of permission under Section 95 of the Act. In this context, Shri Sibal has urged that in a public interest litigation the court examines the substance of the matter and sees whether the impugned action causes injury to the larger public interest and that if the order of the State Government dated June 29, 1991 is examined in that light it cannot be said

C that while passing the said order the State Government has not kept in view the larger public interest. Shri Sibal has emphasised that before passing the order dated 29, 1991 the State Government had obtained the views of the concerned departments, namely, the Revenue Department, the Karnataka State Pollution Control Board and the Department of Town Planning and

D while passing the order the State Government has given due consideration to these views. Assailing the impugned judgment of the High Court holding that the proposed scheme would result in depletion of the available supply of water in Arkavati river and Thippagondanahally water reservoir, Shri Sibal has submitted that no water would be taken either from Arkavati river or from the reservoir and that need of water supply for the proposed colony

E would be met by open wells and bore wells on the plots. As regards the apprehension that the proposed scheme would result in pollution of the water in the river or the reservoir, Shri Sibal has submitted that the Karnataka State Pollution Control Board has laid down stringent conditions with a view to preventing any possibility of such pollution and that

F the order passed by the State Government requires DLF to fully abide by the conditions that are imposed by the Karnataka State Pollution Control Board and the State Government in that regard.

Shri Javeli, the learned senior counsel appearing for the petitioner-respondents, who had filed the writ petitions in the High Court, has,

G however, submitted that the High Court has rightly quashed the order dated June 29, 1991 passed by the State Government and that the proposed scheme would result in depletion of availability of water in river Arkavati and Thippagondanahally reservoir which is the main source of water supply to the city of Bangalore. In this connection, Shri Javeli has invited our

H attention to the impugned judgment of the High Court wherein it has been

observed that the Water Supply and Sewerage Board, in the earlier writ petitions had taken the stand that the proposed scheme would result in depletion of available supply of water in the reservoir, but in the present case the Water Supply and Sewerage Board has chosen not to file any reply. The submission of Shri Javeli is that in the circumstances the High Court was right in proceeding on the basis that in the absence of any reply by the Water Supply and Sewerage Board the earlier position taken by the Water Supply and Sewerage Board must be accepted as correct and that the proposed scheme would result in depletion of available supply of water for the city of Bangalore. Shri Javeli has also submitted that the proposed scheme for construction of villas is bound to create degradation in the environment of the neighbourhood and would also lead to pollution of water in river Arkavati and Thippagondanhally water reservoir since the proposed construction would be made quite close to the river and the reservoir. Shri Javeli has also submitted that the High Court has rightly held that the proposed scheme would result in establishment of a township and this could only be done after following the procedure laid down in Sections 4, 5 and 6 of the Land Revenue Act.

The challenge to the validity of the order dated June 29, 1991 has been made in proceedings which are in the nature of public interest litigation at the instance of persons residing in the city of Bangalore who were apprehensive that the said approval of the scheme would adversely affect the supply of water to the city and would also result in pollution of the waters of river Arkavati as well as Thippagondanahally water reservoir from where the water is supplied to the city of Bangalore. Having regard to the nature of the proceedings the matter is required to be considered in a broad public interest perspective. If the matter is considered in this perspective two questions that arise are:-

(i) In passing the order dated June 29, 1991 giving its approval to the proposed scheme has the State Government kept in view the interest of the public in the matter of pollution of the waters of river Arkavati and Thippagondanahally water reservoir and the availability of supply of water to the city of Bangalore?; and

(ii) If the answer to question No. (i) is in the affirmative, does the approval of the proposed scheme by the State Government under order dated June 29, 1991 suffer from an infirmity justifying interference by the Court in exercise of its power of judicial review?

A In the matter of pollution of the waters the order of the State Government dated June 29, 1991 takes note that the revised scheme submitted by DLF involves construction of individual septic tanks coupled with soil absorption system with dispersion trenches and that the effluent water will be used for gardening, etc. Under the scheme each country villa

B will have a septic tank coupled with soil absorption system and each septic tank will cater for 15 users and the septic tanks will be located at a minimum distance of 100 meters away from the river line. The order dated June 29, 1991 shows that reference had also been made to the Karnataka State Pollution Control Board and the said Board, in its reply vide its letter

C dated May 13, 1991, had stated that the proposal of DLF may be approved subject to the conditions set out in the said letter. In the said conditions the Pollution Control Board had indicated that -

D (i) since the area proposed to be developed is in the sensitive zone, i.e., catchment area of the Thippagondanahally reservoir, all 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,

E (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,

F (iii) the design for the septic tank, soak pit and dispersion shall be submitted to the Pollution Control Board and approval obtained before commencement of building activities,

G (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 the Pollution Control Board,

H (v) Pesticides, fungicides and insecticides shall be applied on the vegetation in the area in a scientific method as approved by the Agricultural Department to avoid contamination of surface water, and

(vi) peasemeters be positioned at regular intervals along with 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 leached to either river or reservoir.

The State Government arrived at the decision to grant approval to the proposed scheme of DLF keeping in view the said conditions indicated by the Karnataka State Pollution Control Board and in the order dated June 29, 1991 it is provided that DLF shall 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 and that the said Board will have the right to inspect and satisfy itself with the compliance of the measures and, in case of any violation, the said Board shall take action as per rules against the violator(s). This would show that while granting permission the State Government has kept in view the danger of pollution of the waters of river Arkavati and Thippagondanahally water reservoir and has taken adequate precautions against the possibility of such pollution by imposing strict conditions as laid down by the Karnataka State Pollution Control Board in that regard. While granting approval to the proposed scheme of DLF the State Government has also directed that any monitoring by peasemeters may be undertaken directly by the Karnataka State Pollution Control Board and Water Supply and Sewerage Board independently of DLF.

As regards depletion in the availability of water for supply to the city of Bangalore from Thippagondanahally water reservoir, we find that in the order dated June 29, 1991 the State Government has taken note of the fact that under the proposed scheme water supply for the colony at 10 lakhs litres per day will be met from bore-wells and open wells and the garden colony will have extensive tree plantings which will improve the ecology of the whole area. Before passing the order reference was made to the Water Supply and Sewerage Board and the said Board had, in its letter dated January 2, 1985, left it to the Government to consider the matter which shows that there was no objection on the part of the Water Supply and Sewerage Board to the proposed scheme on the ground of its having any adverse effect on the availability of water for supply to the city of Bangalore. The High Court has, however, pointed out that in the earlier writ

- A petitions filed by it the Water Supply and Sewerage Board had filed a statement wherein it was pointed out that by reason of establishment of a township on the banks of river Arkavati close to Thippagondanahally water reservoir 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
- B and consequently the quantity and quality of water supply to the city of Bangalore would be adversely affected. The High Court has pointed out that in the present writ petition the Water Supply and Sewerage Board has not filed any reply and that the silence on the part of the Water Supply and Sewerage Board means that the said Board accepts the case put forward by the petitioners that the proposed scheme would adversely affect
- C the supply of water. On that view the High Court has accepted the plea of the petitioners that there is bound to be depletion of water for supply to the city of Bangalore as a result of bringing into existence of the new township in the vicinity of Thippagondanahally water reservoir. In this context, the High Court has also referred to the report of the Committee
- D which was constituted by the Government under the Chairmanship of Shri S. Hanumantha Rao to consider the feasibility of according permission to the modified plan wherein reference has been made to the opinion given by the Water Supply and Sewerage Board in June 1986. In the said opinion, as extracted in the report of the Committee, the Water Supply and
- E Sewerage Board had raised an objection regarding the possibility of pollution of waters of river Arkavati and Thippagondanahally water reservoir. No objection appears to have been raised at that time about depletion in the availability of water for supply to the city of Bangalore. The views of the Water Supply and Sewerage Board regarding the possibility of pollution of the waters of river Arkavati and Thippagondanahally water reservoir were, however, not accepted by the committee keeping in view the fact that plots would be not less than one acre and each plot shall not have more than one house and 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. The
- F failure on the part of the Water supply and Sewerage Board to raise an objection to the revised scheme on the ground of depletion in the availability of water for supply to the city of Bangalore indicates that in view of reduction of density of persons who would be residing in the area under the revised scheme the Water Supply and Sewerage Board felt
- G satisfied that there would be no adverse effect on the availability of water
- H

for supply to the city of Bangalore on account of construction of 270 villas as per the proposed scheme. The High Court was, therefore, in error in proceeding on the basis that since the Water supply and Sewerage Board did not file its reply to the writ petitions of the petitioner-respondents, the said Board must be treated to have accepted as correct the case of the petitioner-respondents that the proposed scheme would adversely affect the supply of water to the city of Bangalore from the Thippagondanahally water reservoir.

It cannot, therefore, be said that in passing the order dated June 29, 1991 granting approval to the proposed scheme submitted by DLF the State Government has failed to take into consideration the matters of public interest raised by the petitioner-respondents, namely, possibility of pollution of waters of river Arkavati and Thippagondanahally water reservoir and the depletion in the availability of water for supply to the city of Bangalore. The order dated June 29, 1991 shows that it was passed after the State Government had taken into consideration all the relevant factors and approval was given to the proposed scheme after the State Government was satisfied that the proposed scheme will not affect the availability of water for supply to the city of Bangalore and had also prevented the possibility of pollution of the waters of river Arkavati and Thippagondanahally water reservoir by laying conditions. We are unable to hold that on the basis of the material on record the State Government could not reasonably take the view that the proposed scheme would not affect the availability of water for supply to the city of Bangalore and would not result in pollution of the waters of river Arkavati and Thippagondanahally water reservoir.

We may now examine the legal grounds on the basis of which the High Court has set aside the order dated June 29, 1991.

The High Court has taken the view that the proposed scheme is for the establishment of a township and that the mandatory procedure for declaring/forming a new village as laid down in Section 6 of the Land Revenue Act which postulates publication of a notice of the proposal inviting objections and consideration of any objections to such proposal. In that regard the High Court has observed:-

A "But the fact remains it would be a new 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 con-
 B struction 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 1 and 4 that no new township would come into
 existence is not true."

C The High Court has also pointed out that the words "Sub : - Forma-
 tion of Township of DLF Universal Ltd. (DLF Arkavati Scheme Green
 Belt)" in the letter of the appellatant dated October 20, 1990 show that the
 appellatant itself was seeking the approval for establishment of a new
 township. The word "township" is not found in any provision of the Land
 Revenue Act which only talks of village, town and city. Village is the
 D smallest unit for the purpose of the Land Revenue Act. We, therefore, do
 not consider it necessary to go into the question whether the proposed
 scheme is for establishment of a township.

E Section 4 of the Act makes provision for division of the State into
 divisions and divisions into districts. Each district consists of taluks, a taluk
 consists of circles and a circle consists of villages. Section 5 empowers the
 State Government to alter or add to the limit of any village or to amal-
 gamate two or more villages or constitute a new village. Section 6 lays down
 the procedure for constitution, abolition, etc., of divisions, districts, taluks,
 circles or villages and it provides as under:-

F "6. *Procedure for constitution, abolition, etc., of Divisions, Dis-*
tricts, Taluks, Circles or Villages.- Before the publication of any
 notification under Section 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 except in cases
 G where it considers not necessary so to do 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
 of any objections to such proposal."

H The expression "village" is defined in Section 2(38) of the Land
 Revenue Act in these terms:-

"*Village*" means a local area which is recognised in the land records as a village for purposes of revenue administration and includes a town or city and all the land comprised within the limits of a village, town or city;"

We are unable to uphold that the grant of approval to the proposed scheme amounts to declaring the said area as a new village or the alteration of the area of an existing village. The question whether the colony which comes into existence under the scheme as proposed is to be declared to be a new village or is to be included in an existing village will have to be considered after the development takes place as proposed in the scheme and at that stage the requirements of Section 6 of the Land Revenue Act may have to be complied with. We are, therefore, unable to agree with the view of the High Court that the State Government was required to follow the procedure laid down in Section 6 of the Land Revenue Act before passing the order dated June 29, 1991 approving the proposed scheme.

As regards diversion of the land from agricultural use to non-agricultural use for construction of villas, it is not disputed that under Section 95 of the Land Revenue Act the power to grant the necessary permission is conferred on the Deputy Commissioner. The High Court has held that in the present case the said power was not exercised by the Special Deputy commissioner but was exercised by the State Government and that the State Government was not competent to exercise the said power under Section 95. In taking this view the High Court has failed to note that it was not a case of diversion of use of an isolated piece of agricultural land by an individual. This was a case where diversion of use was sought in respect of a large number of plots of land. The matter required examination from various aspects and a composite view had to be taken after ascertaining the views of the concerned departments. The State Government alone could do so and, therefore, the matter was required to be considered by the State Government. Before taking a decision on the matter the State Government had obtained the views of the Special Deputy Commissioner with regard to diversion of use of the lands under Section 95 of the Land Revenue Act, as well as the Karnataka State Pollution Control Board, the Director of Town Planning, the Bangalore Metropolitan Development Authority and the Water Supply and Sewerage Board. After taking into consideration the views of these departments the order dated June 29, 1991 was passed. Since the Special Deputy commissioner in his letter dated May

A 10, 1991, had expressed the opinion that conversion could be allowed. It cannot be said that the Special Deputy Commissioner has not exercised the power conferred on him under Section 95 of the Act and the said power has been exercised by the State Government. The State Government has taken note of the views of the Special Deputy Commissioner while considering the matter in the proper perspective. It cannot, therefore, be said that the order dated June 29, 1991 was not in consonance with the requirements of Section 95 of the Land Revenue Act.

Shri Javeli has, however, urged that since under Section 49 of the Land Revenue Act an appeal lies against an order passed by the Special Deputy Commissioner under Section 95 of the Land Revenue Act and since no specific order was passed by the Special Deputy Commissioner in the present case the petitioner-respondents were deprived of their right to file an appeal against the order regarding diversion of user of the land. In this context, the submission of Shri Javeli is further that if the matter had gone to the Special Deputy Commissioner for passing an order under Section 95 of the Land Revenue Act the petitioner-respondents would have had an opportunity of objecting to the grant of the permission for conversion and that the said opportunity had been denied to them. Shri Javeli has invited our attention to sub-section (3) of Section 95 which provides as under :-

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

In our opinion, the matters referred to in sub-section (3) of Section 95 are required to be taken into consideration by the Deputy Commissioner while dealing with an application seeking permission for diversion of use of agricultural land. But from the provisions contained in sub-section (3) of Section 95 we are unable to infer a right in a member of the public who has no special interest in the matter to file an objection to an application for grant of permission to divert the use of agricultural land and to claim an opportunity to appear and oppose the application before the Deputy Commissioner. In cases where permission to divert has been granted under

Section 95 and any person feels that the said permission has been granted in violation of the provisions contained in Section 95(3) of the Act, it is open to him to challenge the same but he cannot claim a right to raise an objection before the Deputy Commissioner at the stage of consideration of the application for diversion. The petitioner-respondents have exercised this right by assailing the permission for diversion before the High Court. We are, therefore, unable to accept the submission of Shri Javeli that the procedure that has been followed in the present case has resulted in denial of any right conferred on petitioner- respondents.

The High court has also held that an order for continuation of the permission that had been granted earlier could not be passed since the earlier order for grant of permission had been quashed by the High Court in the earlier writ petitions filed by the Water Supply and Sewerage Board. Since the earlier permission granted by the Special Deputy Commissioner had been quashed by the High Court an order for continuance of that permission could not be passed and the proper course was to pass a fresh order for grant of permission for diversion of use under Section 95 of the Act. But having regard to the fact that the matter has been considered by the Special Deputy Commissioner and in his letter dated May 10, 1991 he has expressed the opinion that permission for diversion can be granted the defect in the order of the State Government dated June 29, 1991 is one relating to form only and it does not touch the substance of the matter. The said defect is not such as to call for interference with the order dated June 29, 1991 in proceedings instituted by way of public interest litigation especially when it is found that the said order does not adversely affect public interest.

For the reasons aforementioned we are unable to uphold the impugned judgment of the High Court quashing the order of the State Government dated June 29, 1991 giving its approval to the proposed scheme of DLF.

In the result, while Civil Appeal Nos. 4543-45 of 1992 filed by the State are dismissed as withdrawn, Civil Appeals Nos. 4546-48 of 1992 filed by DLF are allowed. The impugned judgment of the High Court is set aside and the writ petitions filed by the petitioner-respondents are dismissed. No costs.

A *I.A.Nos. 1-42 in S.L.P. (C) Nos. 10914-55/91*

The appellant had filed S.L.P.(C) Nos. 10914-55 of 1991 against the judgment of the Division Bench of the High Court dated November 28, 1990 in Writ Appeal Nos. 744-85 of 1987. But after the order of the State Government dated June 29, 1991, the appellant sought leave to withdraw the said special leave petitions and by order dated October 8, 1991 the said special leave petitions were dismissed as withdrawn. Subsequently after the passing of the impugned judgment of the High Court dated April 24, 1992 the appellant has filed I.A. Nos. 1-42 in those special leave petitions wherein it has been prayed that the order dated October 8, 1991 dismissing S.L.P.(C) Nos. 10914-55 of 1991 as withdrawn may be recalled and reviewed and/or are modified and that the said special leave petitions may be restored. Since we are allowing Civil Appeal Nos. 4546-48 of 1992, I.A.Nos. 1-42 in S.L.P(C) Nos. 10914-55 of 1991 do not survive and the same are, therefore, dismissed.

B

C

R.A.

C.A. Nos. 4543-45/92 dismissed

C.A. Nos. 4546-48/92 allowed.

I.A. Nos. 1-42, dismissed.