

S.N. CHANDRASHEKAR AND ANR.

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v.

STATE OF KARNATAKA AND ORS.

FEBRUARY 2, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

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Karnataka Town and Country Planning Act, 1961 as amended by Amendment Act 1 of 2005—Sections 14, 14-A and 15—Grant of sanction by the State for change of land use from residential to commercial purpose to run a restaurant—Validity of sanction under the Act—Held, changes in the land use must conform to the Outline Development Plan and Zoning Regulations—Restaurant is not permissible under the Zoning Regulations—On facts, the sanction order authorising change in land use does not conform to section 14—A and its proviso of the Act—Circumstance necessitating such change of user has not been spelt out in the sanction order—State and the Development Authority have committed serious violation of the Zoning Regulations and provisions of the Act—Hence, the order of sanction for change of land use is not valid.

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Respondent No. 6 purchased a plot from an allottee meant for residential purpose and made an application to the Development Authority under section 14-A of the Karnataka Town and Country Planning Act, 1961 for converting the land use from residential to commercial (restaurant complex). Residents' Welfare Association initially objected to the conversion but later issued a no objection certificate to respondent no. 6 for changing the land use. The State issued a sanction for change of land use to respondent no.6. Pursuant to the sanction, the Development Authority issued a confirmatory letter to respondent no. 6 subject to the condition of obtaining necessary building plan approval from Municipal Corporation and providing for parking space for vehicles in the proposed restaurant complex.

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Appellants filed a writ petition before High Court against respondents—State and Development Authority—for quashing the sanction given to respondent no. 6 for change of land use with a direction to restore the land use for residential purpose. The High Court dismissed the Writ Petition of the appellants.

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A In appeal to the Court, the appellants contended that the order of sanction passed by the State in favour of respondent no. 6 for change of land use is not permissible under the Act; that the State and the Development Authority had acted illegally and without jurisdiction.

B Respondent no. 6 contended that the State has power to grant sanction for change in land use; that the scheme provided under Sections 14 and 15 of the Act is not governed by section 14-A of the Act; that, in terms of Explanation appended to section 15 of the Act, the power for change in land use vests with the Planning Authority irrespective of section 14-A of the Act; that if section 14-A of the Act is applied, then sections 14(2) and 15(2) of the Act would become otiose; that the construction and running of the restaurant had been undertaken only after getting prior no-objection certificate from the Residents Welfare Association; and that the appellants had not initiated a similar action against other persons who also changed the land use for commercial purpose in the same locality.

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D The Development Authority contended that Section 14 of the Act is excluded by section 14-A of the Act; that section 14-A interdicts the application of section 14 of the Act in relation to change in the land user, since prior to section 14-A, no power was vested in it for grant of such permission in the Master Plan and thus the same is required to conform to the provisions thereto; and that necessary procedures have been followed in granting such permission after considering the reports of its Commissioner and Town Planning Member.

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Allowing the appeal, the Court

F HELD: 1.1. The changes of land use or development from the Outline Development Plan would be subject to the procedure laid down in Section 14-A of the Act. Outline Development Plan is a one time plan and hence section 14(2) had no application. Section 14-A of the Act had to be introduced only for that purpose. The proviso to Section 14-A of the Act enumerates that changes of land user should be one in public interest and that the changes proposed should not contravene any of the provisions of the Act or any other law governing planning, development or use of land within the local planning area. Sub-sections (2) and (3) of Section 14 of the Act are applicable *mutatis mutandis* to the change in land use or development from the Outline Development Plan. The proviso provides that such change in land use or development for which such permission was sought for must be in conformity with the Outline Development Plan and the Regulation finally approved under

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sub-section (3) of Section 13 of the Act. The proviso applies to both sub-sections (1) and (2) of Section 14 of the Act. By reason of the proviso, it is, therefore, explicitly clear that all such changes in the land use must conform both with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13, which would in turn mean the changes which are permissible for which no prior permission is required and the changes which are permissible upon obtaining the requisite sanction therefor.

[1048-F, H; 1051-A, B, C, D]

1.2. Under the heading "Residential Zone" specified in Comprehensive Development Plan notified in 1995, two sub clauses were made viz. (a) uses that are permissible; and (b) uses that are permissible under special circumstances by the Development Authority. Restaurant does not come within the purview of the Annexure to the Zoning Regulations i.e. in either of the two Annexure to the Zoning Regulations i.e. in either of the two categories. Hence, the running of a hotel in residential zone is not permissible under the Zoning Regulations. [1048-B; 1051-E]

1.3. The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Zoning Regulations. Section 14(1) of the Act, as it stood then, categorically stated that every change in the land use must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations. The provisions of the Act are to be read with the Regulations and so read, the construction of sections 14 and 15 of the Act will lead to only one conclusion namely such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or restaurant was not permissible both under classes (a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under sections 14 and 15 of the Act. It is precisely for that reason, section 14-A of the Act was introduced. The words "subject to" used in section 14 of the Act must be given full effect to. [1053-G, H; 1054-A, B]

Ashok Leyland Ltd. v. State of T.N. and Anr., [2004] 3 SCC 1, referred to.

Special Deputy Commissioner v. Bhargavi Madhavan, ILR (1987) Kar 1260 and *Sri Krishnapur Mutt Udipi v. N. Vijayendra Shetty and Anr.*, [1992] 3 Kar.L.J. 326, referred to.

1.4. Respondent no. 6, Development Authority and the State understood in no uncertain terms that the change in the land use from residential purpose

A to commercial purpose must conform to the provisions of section 14-A of the Act and not sections 14 and 15 of the Act thereof. A bare perusal of the order of sanction issued by the State would demonstrate that the same did not disclose as to for what purpose and on what ground the same had been sanctioned. None of the ingredients contained in Section 14-A of the Act had been referred to. It was not shown as to why the Development Authority recommended and sought the State approval for conversion of land use of the plot from residential to commercial (restaurant complex). The circumstances necessitating such change of user has not been spelt out in the sanction order. Furthermore, none of the other requirements of law stated in the proviso to Section 14-A of the Act had been complied with. The public interest involved in directing such change of land use is not known. [1055-B, C, D, E]

1.5. It is nowhere stated in the letter of the Commissioner of Development Authority to the Principal Secretary of the State as to how the Authority intended to tackle the traffic problem. The letter did not reveal as to how the mind of the Authority was applied having regard to its earlier views that conversion of the said plot to commercial use may give rise to traffic problem. It is, therefore, apparent that the objections which were raised and the basic issues which were required to be dealt with by the Authority did not receive serious consideration. [1055-G, H; 1056-A]

1.6. The Development Authority should consider whether the ingredients contained in section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regard the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law. [1056-C, D]

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Ors., [2005] 7 SCC 627 - (2005) 7 SCALE 386; *Cholan Roadways Ltd. v. G. Thirugnanasambandam*, [2005] 3 SCC 241; *Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh*, [2005] 3 SCC 232 and *Bangalore Development Authority and Ors. v. R. Hanumaiah and Ors.*, (2005) 8 SCALE 80, referred to.

De Smith's Judicial Review of Administrative Action, 5th Edition referred to.

1.7. The Act does not provide for two different schemes, i.e. one contained in sections 14 and 15 of the Act and another under Section 14-A of the Act.

Both the provisions are operating in same field. Had the violation in the matter of change in user from residential to commercial been a minor one, this Court might not have interfered but the State and the Development Authority having committed serious violation of the Zoning Regulations as also section 14-A of the Act, the same cannot be sustained. Respondent No. 6 can utilise the premises held by him within the purview of the permissible user as contained in the Zoning Regulations. [1058-A, D, E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 938 of 2006.

From the Judgment and Order dated 2.4.2004 of the Karnataka High Court in Writ Petition No. 27049/2002 (GM-BDA-PIL).

U.U. Lalit, Naveen R. Nath, Ms. Lalit Mohini Bhat and Ms. Anitha Shenoy for the Appellants.

S.S. Javali, S.K. Kulkarni, M. Gireesh Kumar, Vijay Kumar, P.R. Ramasesh, Sanjay R. Hegde, Anil Kr. Mishra and A. Rohen Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The State of Karnataka enacted the Karnataka Town and Country Planning Act, 1961 (for short, 'the Act'). The Bangalore Development Authority (for short, 'the BDA') had been constituted under the said Act. A Comprehensive Development Plan was prepared by the BDA. In Jayanagar which is a residential area in the town of Bangalore, allotment of houses had been made to individuals for residential purpose only in terms of the said development plan. Whereas the Appellants were allotted houses bearing nos. 282D and 281D, one K.V. Ramachandra was allotted Plot No.585. A deed of sale was executed in his favour on 10.12.1994, *inter alia*, on the condition that the same would be exclusively used for residential purpose only. The Respondent No. 6 purchased the said premises from the said K.V. Ramachandra by a registered deed of sale dated 24.08.1998. He intended to convert the land use from residential to commercial wherefor an application was made before the BDA. The said application was treated to be one under Section 14-A of the Act.

The Jayanagar 5th Block Residents' Welfare Association filed its objections thereto on 27.03.1999. It, however, later on issued a no objection

A certificate, stating :

“...The Association has no objection for conversion of the site for commercial purpose for the use of a vegetarian restaurant. The premises is a corner site and you must arrange separate parking without obstructing the movement of vehicles.”

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Inspections of the plot in question by two senior officers of BDA were made thereafter.

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Upon completion of the requisite formalities, sanction for change of land use was issued on or about 07.10.1999. Pursuant to the order of sanction granted by the State of Karnataka, the BDA issued a confirmatory letter dated 10.12.1999 subject to the condition of obtaining necessary building plan approved by the Corporation and providing for parking of vehicles in the building.

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An objection was raised by the residents of the locality when the said respondent started a restaurant without obtaining any licence therefor. An application for grant of licence was submitted by the Respondent No.6 on 17.01.2000. The Corporation informed the Respondent No.6 that his application would be considered only upon completion of construction of the building.

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However, he made another application on 25.02.2000 for grant of licence. He also filed a writ application before the Karnataka High Court, marked as W.P. No.11139 of 2000 wherein the Corporation was directed to consider his application for grant of licence within six weeks. A building licence was granted in his favour on 12.05.2000 and a modified plan was sanctioned on 19.08.2000. He was granted a licence to run the restaurant till 31.03.2000.

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Questioning the legality and/or validity of the said notification dated 04.08.1999, some of the residents of the locality filed a public interest litigation being Writ Petition No.9078 of 2001. In the meanwhile a notice was issued to the Respondent No. 6 by the Corporation as to why, deviation having been made from the sanctioned plan, the same should not be directed to be removed.

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As the Respondent No.6 failed to remove the deviated portions, the Corporation by its notice dated 06.01.2002 authorized the Executive Engineer to give effect to the confirmatory order passed by it by removing the deviated portions. The Respondent No.6 thereupon approached the Standing Committee by way of appeal whereafter his hotel licence was renewed. As running of hotel allegedly caused nuisance, a representation was made by the Ladies

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Association of the locality on 12.01.2002. A further representation was made

on 19.01.2002 by the general public.

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As no response was made in relation thereto, the Appellants herein filed a writ petition before the Karnataka High Court, *inter alia*, praying for the following reliefs :

“(1) Issue a writ in the nature of *mandamus* or *certiorari* quashing Order No. UDD 194 BDA 99 Dt. 07.10.1999 passed by the Under Secretary to Government (Annexure-D);

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(2) Issue a writ in the nature of *mandamus* or *certiorari* quashing the confirmatory letter No.BDA/DUP/1349/99-2000 Dt. 10.12.1999 (Annexure “E”) issued by the Bangalore Development Authority;

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(3) Declare that the proceedings of the Standing Committee Dt. 16.03.2002 in subject No. Aa. Stha. Sa(Aa) 798-01-02 (produced as Annexure “N”) to the extent the said proceedings grants renewal of hotel licence in favour of Respondent No.6 as null & void and beyond the competence of the Standing Committee;

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(4) Issue a writ in the nature of *mandamus* directing the Respondents 1 to 5 to take immediate steps to prevent Respondent No.6 from using the premises No.585, 10th Main Road, V Block, Jayanagar, Bangalore for running a hotel and to ensure that the said premises is used only for residential purposes;”

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In his counter affidavit, the Respondent No.6 herein, *inter alia*, contended that the Residential Welfare Association, gave its consent by letter dated 13.04.1999 for change of user of the property and for establishing a vegetarian restaurant at Plot No.585.

The High Court dismissed the writ petition filed by the Appellants herein holding, *inter alia*,: (i) when objections were called for, wherefor notices were published in several newspapers, only Jayanagar 5th Block Residents’ Welfare Association filed an objection and later on withdrew the same; (ii) the BDA in its resolution dated 29.06.1999 held that conversion was in public interest and permitted the conversion of use from dwelling to commercial (restaurant); (iii) as the Appellants did not file any objection, they were not entitled to any relief; and (iv) number of permissions by the planning authorities had been accorded for change of land use by invoking Section 14-A of the Act and, thus, there was no reason, why such permission should not be granted to the Respondent No.1.

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A Mr. U.U. Lalit, learned Senior Counsel appearing on behalf of the Appellants, contended that having regard to the fact that Section 14-A was specifically introduced in the year 1991, the State of Karnataka as also the BDA acted illegally and without jurisdiction in granting such permission as the conditions precedent laid down therefor had not been fulfilled. It was submitted that while granting such permission, the basic issue that such change of land use is impermissible in law had not been taken into consideration and the impugned order was passed upon taking into consideration irrelevant factors and without considering the relevant ones.

C Mr. S.S. Javali, learned Senior Counsel appearing on behalf of the Respondent No. 6, on the other hand, submitted : (i) From various provisions of the Act, it would appear that Sections 14 and 15 thereof provide for a separate scheme which is not governed by Section 14-A of the Act. (ii) As in terms of Sections 14 and 15 of the Act, the power as regard change in user vests in the Planning Authority, it was not necessary to invoke Section 14-A of the Act. (iii) If the provisions of Section 14-A in a case of this nature is applied, Sections 14(2) and 15(2) would become otiose. (iv) Having regard to the fact that the Association had given its consent, constructions were permitted to start a vegetarian restaurant by the Respondent No.6 and the said restaurant has been running for a period of more than three years; and (v) as the other persons similarly situated are operating in the area and as the Appellants or any other person had not taken any objection thereto, it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

F Mr. S.K. Kulkarni, learned counsel appearing for the BDA, would submit that Section 14, which provides for a prohibitory clause as regard change of user, must be held to be excluded by Section 14-A of the Act. The learned counsel urged that Section 14-A interdicts the application of Section 14 in relation to change in the land user; as prior to Section 14-A, no power was vested in the BDA for grant of such permission in the change of Master Plan, and, thus, the same is required to conform to the provisions thereto. However, in view of the fact that the procedures have been followed in granting such permission upon taking into consideration the reports submitted by the two senior officers, even if any error has been committed, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

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STATUTORY PROVISIONS:

The Act was enacted to consolidate and amend the law relating to town planning, some of the relevant provisions of the Act are as under :

"2. In this Act, as it then stood, unless the context otherwise requires,-

(1-c) "*Development*" with its grammatical variations, means the carrying out of building, engineering, mining, or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land and includes sub-division of any land;

(1-d) "*Development plan*" means Outline Development Plan or Comprehensive Development Plan prepared under this Act

(2) "*Land*" includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(3) "*Land use*" means the major use to which a plot of land is being used on any specified date;

(5) "*Owner*" includes any person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager, or receiver for another person, or for any religious or charitable purpose, the rents or profits of the property in connection with which it is used;

(7) "Planning Authority" means, -

(a) in the case of —

(i) the local planning area comprising the City of Bangalore, the Bangalore Development Authority, and

(i-a) the local planning area comprising any urban area" defined in the Karnataka Urban Development Authorities Act, 1987, the Urban Development Authority of such urban area

(ii) any other local planning area in respect of which the State Government may deem it expedient to constitute a separate Planning Authority,

the Planning Authority constituted under this Act,

A (b) in the case of local planning area in respect of which a Planning Authority is not constituted under this Act, the Town Improvement Board constituted under any law for the time being in force having jurisdiction over such local planning area, and where there is no such Town Improvement Board, the local authority having jurisdiction over such local planning area;

B (8) "*Plot*" mean a continuous portion of land held in one ownership;

Section 12 of the Act, as it then stood, which has since been substituted by Act 1 of 2005, dealt with the contents of Outline Development Plan in the following terms :

C "12. *Contents of Outline Development Plan.*—(1) An Outline Development Plan shall generally indicate the manner in which the development and improvement of the entire planning area within the jurisdiction of the Planning Authority are to be carried out and regulated. In particular it shall include, -

- D (a) a general land use plan and zoning of land use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;
- E (b) proposals for road and highways; and widening of such roads and highways in congested areas;
- F (c) proposals for the reservation of land for the purposes of the Union, any State, any local authority or any other authority established by law in India;
- G (d) proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed;
- (e) such other proposal for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

Explanation.—"Building line" means the line up to which the plinth of a building adjoining a street may lawfully extend and includes the lines prescribed, if any, in any scheme.

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(2) The following particulars shall be published and sent to the State Government through the Director along with the Outline Development Plan, namely :-

- (i) a report of the surveys carried out by the Planning Authority before the preparation of such plan;
- (ii) a report explaining the provisions of such plan;
- (iii) regulations in respect of each land use zone to enforce the provisions of such plan and explaining the manner in which necessary permission for developing any land can be obtained from the Planning Authority;
- (iv) a report of the stages by which it is proposed to meet the obligations imposed on the Planning Authority by such plan;
- (v) an approximate estimate of the cost involved in the acquisition of lands reserved for public purposes.”

Chapter III of the Act deals with preparation of Outline Development Plan. (now styled as preparation of Master Plan) Chapter IV deals with the Comprehensive Development Plan (now styled as “Enforcement of Master Plan”). Outline Development Plan is a one time plan. It could be superseded under Section 23 of the Act (since repealed). Once the Comprehensive Development Plan has been prepared for any area, Section 25 (as it then existed) provided for revision of the Comprehensive Development Plan in every ten years.

Section 14-A of the Act provides for change of land use from the Outline Development Plan. Section 14(1) thereof, as it then stood, provided that every development in the area covered by the plan subject to Section 14A shall conform to the provisions of the Act. Section 14(2), however, provides that no change in the land use or development shall be made except with the written permission of the Planning Authority which shall be contained in the commencement certificate granted by the Planning Authority in the form prescribed.

It is furthermore not in dispute that the first Comprehensive Development Plan was prepared in the year 1984, whereas the second Comprehensive Development Plan was prepared in the year 1995. The change contemplated thereby is only from one category of land use to another. The land use indisputably is categorized into six categories, details whereof would be noticed later.

- A Sub-section (2) of Section 15 of the Act, which provides for a deemed grant, refers only to the change of permitted category. It is furthermore not in dispute that by a notification dated 05.01.1995, the Comprehensive Development Plan was notified providing for Zoning of Land Use and Regulations of the BDA. Under the heading "Residential Zone", two sub clauses were made, *viz.* (a) uses that are permissible; (b) uses that are permissible under special circumstances by the Authority. Restaurant does not come within the purview of Annexure II of the said Zoning Regulations i.e. in either of the aforementioned categories. Schedule I thereof sets out a list of service industries that are permissible in Residential Zone (as a part of Residential building)/Retail Business Zone. The Regulations framed were approved by the Government under Section 13(1) of the Act.

ANALYSIS OF THE STATUTORY PROVISIONS:

- D The Act prior to coming into force of Section 14-A of the Act contained two provisions for enabling change in land use. The definition of 'land use' indisputably will have to be read with the Zoning Regulations.

- E Section 14(1), as it then stood, of the Act provided that every change in land use and every development in the area covered by the Plan subject to Section 14A shall conform to the provisions of the Act. Section 14(2), however, provides that no such change in land use or development shall be made except with the written permission of the Planning Authority which shall be contained in a commencement certificate in the form prescribed. Section 15 provides for the procedure required to be followed where the Planning Authority is required to pass an order in terms of Section 14 of the Act. So far as changes of land use or development from the Outline Development Plan is concerned, the same would be subject to the procedure laid down in Section 14-A of the Act. Outline Development Plan being a one time Plan, evidently sub-section (2) of Section 14 had no application. It is only for that purpose Section 14-A had to be introduced. Section 14-A categorically states that change in the land use or development from the Outline Development Plan must be necessitated by : (i) topographical or cartographical or other errors and omissions; (ii) due to failure to fully indicate the details in the Plan or changes arising out of the implementation of the proposals in Outline Development Plan; and (iii) circumstances prevailing at any particular time by the enforcement of the Plan.

- H The proviso appended to Section 14-A enumerates that : (i) such changes should be one in public interest; (ii) the changes proposed should

not contravene any of the provisions of the Act or any other law governing planning, development or use of land within the local planning area; and (iii) the proposal for all such changes are published in one or more daily newspapers, having circulation in the area, inviting objections from the public. Sub-sections (2) and (3) of Section 14 of the Act are applicable *mutatis mutandis* to the change in land use or development from the Outline Development Plan. Sub-section (1) of Section 15 provides that on receipt of the application for permission under Section 14, the Planning Authority shall cause an enquiry to be made whereupon it may either grant or refuse a commencement certificate. Sub-section (2) of Section 15 raises a legal fiction as regard failure on the part of the Planning Authority to issue such certificate, as by reason thereof such certificate would be deemed to have been granted. The proviso appended thereto, however, provides that such change in land use or development for which such permission was sought for must be in conformity with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13. The said proviso applies to both sub-sections (1) and (2). By reason of the said proviso, it is, therefore, explicitly clear that all such changes in the land use must conform both with the Outline Development Plan and the regulation finally approved under sub-section (3) of Section 13, which would in turn mean the changes which are permissible for which no prior permission is required and the changes which are permissible upon obtaining the requisite sanction therefor.

CHANGES OF USER:

We have noticed hereinbefore that so far as running of a hotel in a residential zone is concerned, having regard to the Zoning Regulations, the same is not permissible.

The Zoning Regulations provide for use of land that are permitted and may be permitted under special circumstances by the authority in the local planning area of Bangalore. Thus, even for the purpose of invoking clause (b) of the Regulations affecting residential zone must be referable to the special circumstances which were obtaining. We may, at this stage take note of explanation appended to Section 15. In terms of the said explanation, the power to grant necessary permission under Section 15 for a change of user of land would include the power to grant permission for retention on land of any building or work constructed or carried out thereon before the date of the publication of the declaration of intention to prepare an Outline Development Plan under sub-section (1) of Section 10 or for the continuance

A of any use of land instituted before the said date.

JURISDICTION OF PLANNING AUTHORITY:

B The submission of Mr. Javali that in terms of the explanation appended to Section 15, a power has been conferred upon the Planning Authority as regard change of user would mean that such a power can be exercised irrespective of the provisions of Section 14-A of the Act. The said submission cannot be accepted for more reasons than one.

C We may notice that in *Special Deputy Commissioner v. Bhargavi Madhavan*, ILR (1987) Kar. 1260, a Division Bench of the Karnataka High Court held that only intra-category changes need not go to the Government. However, in that case Section 14-A could not be noticed as the said provisions was brought out later.

D Yet again in *Sri Krishnapur Mutt. Udipi v. N. Vijayendra Shetty and Anr.*, (1992) 3 Kar. L.J. 326], S. Rajendra Babu, as the learned Chief Justice then was, held :

E “In order to correctly comprehend the contentions advanced on either side, it is necessary to examine the scheme of the Act. Section 2(1b) defines ‘commerce’ and ‘commercial’ which mean carrying on any trade, business or profession, sale or exchange of goods of any type whatsoever, the running of, with a view to make profit, hospitals, nursing homes, infirmaries, sarais, educational institutions, hotels restaurants, boarding houses not attached to educational institutions. Section 2(1c) defines ‘development’ as carrying out of building, engineering, mining, or other operations in, or, over or under land or the making of any material change in any building or land, or in the use of any building, or land and includes sub-division of any land. Under sub-section (3) of Section 2 “land-use” is defined to mean the major use to which a plot of land is being used on any specified date. Under Section 10 of the Act the Planning Authority is required to publish a declaration in the Official Gazette of its intention to prepare an outline development plan of an area and in the present case such a plan has been published and the land in question has been shown to be a residential one. Section 12 sets out, *inter alia*, that such plan shall include a general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes. Thus, the outline development plan will

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only set out the nature of the use to which the land is put *viz.*, residential, commercial or industrial or any other purpose. In the present case the same had been shown to be residential although on 19.9.1979 the nature of the land-use was allowed to be changed to commercial for construction of a shop. Section 14(2) requires that change in the land-use or development referred to in sub-section (1) thereof shall be made only with the permission of the Planning Authority. The expression 'development' in this context means the same as defined in Section 2(1c) of the Act referred to earlier. Inasmuch as in the present case there is no dispute as to the change of land-use permitted on 19.9.1979 the question to be considered now is whether the first respondent could have utilized the land for the purpose of construction of a restaurant and a lodging house by altering the building from a shop and an office premises and by putting up additional floors. The concept of development provided in the explanation to sub-section (2) of Section 14 does not refer to every change but refers only to building activity carried on or any material change in the use of building and other land. Therefore, attention will have to be revetted and confined to the concept of material change in the present case."

It was further observed :

"The restrictions imposed in the planning law though in public interest should be strictly interpreted because they make an inroad into the rights of a private persons to carry on his business by construction of a suitable building for the purpose and incidentally may affect his fundamental right if too widely interpreted. The building bye-laws while sanctioning a plan will take care of what parking space should be provided in the area and whether the building itself would have such facility"

The Planning Authority has no power to permit change in the land use from the Outline Development Plan and the Regulations. Sub-section (1) of Section 14, as it then existed, categorically stated, that every change in the land use, *inter alia*, must conform to the Outline Development Plan and the Regulations which would indisputably mean that it must conform to the Zoning Regulations.

The provisions of the Act are to be read with the Regulations, and so read, the construction of Sections 14 and 15 will lead to only one conclusion,

A namely, such changes in the land use must be within the Outline Development Plan and the Zoning Regulations. If running of a hotel or a restaurant was not permissible both under clauses (a) and (b) of the Zoning Regulations in a residential area, such change in the land use could not have been permitted under Sections 14 read with 15 of the Act. It is precisely for that reason, Section 14-A was introduced.

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The words “subject to” used in Section 14 are of some significance. The said words must be given full effect to. The meaning of the said words had been noticed in *Ashok Leyland Ltd. v. State of T.N. and Anr.*, [2004] 3 SCC 1 in the following terms :

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“92. Furthermore, the expression “subject to” must be given effect to.

93. In *Black's Law Dictionary*, 5th Edn., at p. 1278, the expression “subject to” has been defined as under:

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“Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *Homan v. Employers Reinsurance Corpn.*”

IMPUGNED ORDER OF THE STATE:

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The Comprehensive Development Plan of Bangalore comprises of six categories, namely, (i) residential; (ii) commercial; (iii) industrial; (iv) parks & open spaces; (v) public and semi public; and (vi) transportation. All the six categories of land have been distinctly delineated therein. Each category of the lands, however, contains several sub-categories. Change of user from one sub-category to another within the category is permitted in terms of regulations.

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Plot No.585 where the Respondent No.6 is running a restaurant is indisputably within a residential zone and abutting a park. The order issued by the State of Karnataka dated 11.10.1999 reads as under :

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“After considering the proposal under Section 14A(1)(a) of the Karnataka Urban & Rural Planning Act, 1961, the Government has accorded permission for conversion of the land area measuring 2275 sq.ft. Site No.585, 5th Block, 10th Main, Jayanagar, Bangalore from residential purposes to commercial (restaurant/complex) purposes, subject to the following conditions.

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- (1) The revised land conversion charges shall be obtained by the Authority.

- (2) To make suitable conversion as required under Intensive Development Plan. A
- (3) Conditions imposed by the Authority.”

The Respondent No.6, the Development Authority and the State of Karnataka, therefore, understood in no uncertain terms that the change in the land use from residential purpose to commercial purpose in respect of 2275 sq. ft., in Jayanagar must conform to the provisions of Section 14-A of the Act and not Sections 14 and 15 thereof. A bare perusal of the said order of sanction would demonstrate that the same did not disclose as to for what purpose and on what ground the same had been sanctioned. None of the ingredients contained in Section 14-A of the Act had been referred to. We have not been shown as to why the BDA recommended and sought the Government approval for conversion of land use of 2275 sq. ft. in Plot No. 585 from residential to commercial (restaurant complex). Admittedly, such a change in the land use was not occasioned owing to topographical, cartographic or other errors or omissions; or due to failure to fully indicate the details in the Plan or changes arising out of the implementation of the proposal in Outline Development Plan. The only submission made before us is that action on the part of the BDA and the State in granting sanction would come within the purview of the circumstances prevailing at any particular time. What was the circumstance necessitating such change of user has not been spelt out in the sanction order. Furthermore, none of the other requirements of law stated in the proviso appended thereto had been complied with. We do not know as to what was the public interest involved in directing such change of land use. B C D E

It is interesting to note that the Commissioner, BDA, while forwarding his recommendations to the Principal Secretary of Urban Development Department in terms of his letter dated 29.06.1999 mentioned that on 01.06.1999 the Commissioner and the Town Planning Member upon examination of the surrounding areas noticed that the site is located in a prominent place and opined that if the site is converted to commercial purposes, the volume of traffic may increase causing parking problem and obstructing the traffic and on the said premise stated that the application may have to be rejected. It is nowhere stated in the said letter as to how the Planning Authority intended to tackle the said problem. Paragraph 4 of the said letter did not reveal as to how the mind of the Authority was applied having regard to its earlier views that conversion of the said plot to commercial use may give rise to traffic problem. It is, therefore, apparent that the objections which were raised and F G H

A the basic issues which were required to be dealt with by the said Authority did not receive serious consideration.

JUDICIAL REVIEW:

B It is now well-known that the concept of error of law includes the giving of reasons that are bad in law or (where there is a duty to give reason) inconsistent, unintelligible or substantially inadequate. [See *De Smith's Judicial Review of Administrative Action*, 5th Edn. p. 286]

C The Authority, therefore, posed unto itself a wrong question. What, therefore, was necessary to be considered by the BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regard the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

D In *Hindustan Petroleum Corpn Ltd. v. Darius Shapur Chenai & Ors.*, [2005] 7 SCC 627 (2005) 7 SCALE 386, this Court referring to *Cholan Roadways Ltd. v. G. Thirugnanasambandam*, [2005] 3 SCC 241, held :

E “Even a judicial review on facts in certain situations may be available. In *Cholan Roadways Ltd. v. G. Thirugnanasambandam*, this Court observed:

F “34. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is ‘preponderance of probability’ and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out.

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35. Errors of fact can also be a subject-matter of judicial review. (See *E. v. Secy. of State for the Home Deptt.* 14) Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled '*Judicial Review, Appeal and Factual Error*' published in 2004 Public Law, p. 788." A

[See also *Sonepat Cooperative Sugar Mills Ltd. v. Ajit Singh*, [2005] 3 SCC 232 - paras 23 and 24] B

The order passed by the statutory authority, it is trite, must be judged on the basis of the contents thereof and not as explained in affidavit [See *Bangalore Development Authority & Ors. v. R. Hanumaiah & Ors.*, [2005] 8 SCALE 80]. C

In *Hanumaiah*, (supra), this Court has categorically held that BDA having been constituted for specific purposes, it may not take any action which would defeat such purpose. It was observed :

"Bangalore Development Authority has been constituted for specific purposes. It cannot take any action which would defeat such purpose. The State also ordinarily cannot interfere in the day to day functioning of a statutory authority. It can ordinarily exercise its power under Section 65 of the 1976 Act where a policy matter is involved. It has not been established that the Chief Minister had the requisite jurisdiction to issue such a direction. Section 65 of the 1976 Act contemplates an order by the State. Such an order must conform to the provisions of Article 166 of the Constitution of India." D E

It was further observed :

"Directions issued by the Chief Minister in the present case would not be to carry out the purpose of the Act rather it would be to destroy the same. Such a direction would not have the sanctity of law. Directions to release the lands would be opposed to the statute as the purpose of the Act and object of constituting the BDA is for the development of the city and improve the lives of the persons living therein. The authority vested with the power has to act reasonably and rationally and in accordance with law to carry out the legislative intent and not to destroy it. Direction issued by the Chief Minister run counter to and are destructive of the purpose for which the BDA was created. It is opposed to the object of the Act and therefore, bad in law" F G H

A *CONCLUSION:*

We are for the foregoing reasons unable to accept the submission of Mr. Javali that the Act provides for two different schemes, one contained in Sections 14 and 15 and another under Section 14-A of the Act. We are of the opinion that both the provisions are operating in different fields. It is no doubt true that Respondent No.6 herein applied for change of user from residential to commercial on 04.01.1999 whereafter a publication was made in three newspapers inviting objections from the local residents. It is also true that the Respondent No.6 herein acted on the basis of the plan sanctioned in this behalf.

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C It may furthermore be true that the Respondent No.6 was accorded permission as far back as on 20.12.1999, whereas the writ petition was filed on 15.07.2002. However, we have also noticed that in the meanwhile, the Respondent No.6 committed some other violations. Had the violation in the matter of change in user from residential to commercial been a minor one, probably, this Court might not have interfered but the State of Karnataka and the BDA having committed serious violation of the Zoning Regulations as also Section 14-A of the Act, we are of the opinion that the same cannot be sustained.

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E It may further be true that the Respondent No.6 had invested a heavy amount but his investment in the matter of construction of a building would remain as it is. The Respondent No.6 can utilize the premises held by him within the purview of the permissible user as contained in the Zoning Regulations referred to hereinbefore. If he intends to use the same for such a purpose for which the permission of the BDA is necessary, there is no doubt in our mind, that the BDA will consider his request sympathetically.

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For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

G B.S.

Appeal allowed.