

(2014) 03 KAR CK 0146

In the Karnataka High Court

Case No : Writ Petition Nos. 5325 and 5326 of 2014 (KLR-CON)

Anusuya Hegde P.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 01-03-2014

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 48A, 77

Karnataka Land Revenue Act, 1964 — Section 136, 5, 95, 95(1), 95(5)

Citation : (2015) 2 AKR 21 : (2015) 1 KarLJ 153 : (2015) 3 KCCR 2222

Hon'ble Judges : Dr. Jawad Rahim, J

Bench : Single Bench

Advocate : Bipin Hegde, Advocate for the Appellant; D. Aswatappa, Additional Government Advocate, Advocate for the Respondent

Judgement

Dr. Jawad Rahim, J.—The petitioner in this writ action has sought writ to declare the land measuring 9 acres 9 guntas including 9 guntas kharab in Sy. No. 78 (old No. 58) and the land measuring 3 guntas in Sy. No. 109 of Singrehalli Village, Kindana Hobli, Devanahalli Taluk, deemed to have been converted from agricultural use to non-agricultural use as envisaged under Section 95(5) of the Karnataka Land Revenue Act, 1964 and also a direction in the nature of mandamus to the 2nd respondent to issue conversion order after determining and collecting conversion fee from the petitioner. She has also sought writ of certiorari to quash the order dated 31-1-2014 passed by the 2nd respondent rejecting the request for conversion.

2. Upon notice regarding rule, Sri Aswatappa represents the respondent-State and the Deputy Commissioner concerned.

3. The relief sought is supported by the following contextual facts:

The petitioner claims she purchased the land measuring 9 acres 9 guntas in Sy. No. 78 (old No. 58) and 31 guntas in Sy. No. 109 (old No. 58) of Singrahalli Village, by virtue of the sale deed dated 13-8-2008 from the owner Gowri

Venkateshan and her children. Having acquired the property in the manner aforesaid, all entries in the revenue records were mutated in her name and she has enjoyed physical possession. To put the land to more beneficial use she submitted application on 30-4-2010 to the Planning Authority i.e., BIAPPA for change of land use from agriculture to residential use. During the processing application, the Tahsildar was directed to submit report. The Tahsildar recommended petitioners case and based on which the State Government passed an order on 26-6-2012 permitting change of land use from agricultural to residential purpose subject to payment of Rs. 8,10,000/- as fee.

4. Being successful in obtaining the Government order on 26-6-2012, she applied to the Appropriate Authority-Government viz., Karnataka Land Revenue Act, seeking conversion of land from agriculture to non-agriculture use in the aforesaid survey number. The respondent 2 received the application as is evident from Annexures-A and A1. The petitioner claims that she has complied with all the requirements and has produced relevant records, sale deed, RTC mutation extract and declaration, that it was not a tenanted land. The PTCL certificate and encumbrance certificate were also furnished. The 2nd respondent received the application on 6-2-2013 and addressed letter to the Tahsildar on 7-2-2013 calling for report. The Tahsildar sent report on 24-5-2013 stating there is no impediment to grant conversion as requested by the petitioner. Thereafter on 27-6-2013, the Deputy Commissioner again called for report. In response to it, the Tahsildar is said to have reconsidered the issue and sent 2nd report on 22-8-2013 stating that records of title are not traceable to support the petitioner's claim that her vendor was the grantee of the land in question. Based on the second report of the Tahsildar dated 22-8-2013, the 2nd respondent has issued a notice on 5-9-2013 calling upon the petitioner to substantiate her ownership. The petitioner replied on 18-9-2013 producing relevant records which were not considered by the Deputy Commissioner. In the meanwhile, the petitioner filed writ petition on 30-1-2014. The petitioner's main grievance is soon after she filed writ petition seeking directions, the respondent has issued another order dated 31-1-2014 sent to her on 3-2-2014 rejecting the application filed for conversion. Thereafter on 18-2-2014 another notice is issued under Section 136 of the Act to delete her name from the entries in the revenue records.

5. On the above factual matrix the petitioner has sought for relief stated above.

6. Sri Bipin Hegde learned Counsel for the petitioner would submit the 2nd respondent having received petitioner application for conversion was required to consider it within the period prescribed by Section 95 of the Land Revenue Act. The 2nd respondent having received application on 6-2-2013 asked for the report from the Tahsildar which report he received on 24-5-2013. During this period as the time stipulated by sub-section (5) of Section 95 had expired entitling the petitioner to get benefit of deemed conversion, the petitioner requested the 2nd respondent to determine fee payable. But he did not do so. It is pointed out even

after receiving report from the Tahsildar on 24-5-2013 the Deputy Commissioner did not pass any order on her application. The first report of the Tahsildar supported her claim entitling her to get conversion. But for the reasons unexplained the Deputy Commissioner once again called upon the Tahsildar to submit fresh report by letter dated 27-6-2013. Drawing my attention to it, he submits that the Deputy Commissioner had no reason to call for the 2nd report as the first report dated 24-5-2013 clearly spelled out the mode of acquisition of the property by the petitioner's vendor and supported the lawful title claimed by her. He submits the conduct of the Deputy Commissioner, directing the Tahsildar to send a report on 22-8-2013 stating that the records are not available. He has seriously assailed the 2nd report on the ground it is virtually induced report to create adverse situation. He submits the Tahsildar under undue influence of the 2nd respondent sent second report stating records are not available. It clearly indicates that the 2nd report was at the instance of the 2nd respondent. He would then submit Deputy Commissioner's failure to consider the application for the period of four months entitles petitioner to deemed conversion. He submits the illegal notice issued by 2nd respondent on 5-9-2013 has been considered and petitioner has produced all relevant documents. He submits the petitioner being aggrieved by the inaction of the 2nd respondent filed this writ petition and soon after service of notice, the second respondent has issued antedated order on 31-1-2014 signed on 3-2-2014 rejecting her application. He submits all these acts of the 2nd respondent are not beyond suspicion alternatively, submits that as the provisions of sub-section (5) of Section 95 statutorily provides deemed conversion, the 2nd respondent had lost legal competence to conduct any enquiry or issue order after the period prescribed has expired. Therefore, he claims that the same is to be quashed as being unconstitutional. He will also submit that the Tahsildar has again sent report to the Deputy Commissioner on 21-2-2014 stating that all records are available in the office which clearly indicates, the opinion formed by the Deputy Commissioner and the earlier report submitted by the Tahsildar is factually incorrect. This highlights all is not well in the office of the 2nd respondent.

7. Sri Aswatappa had difficult time to go against the assertion of the petitioner. For the above reasons that the Deputy Commissioner has not disputed the receipt of the application on 6-2-2013. Undoubtedly once the application is filed under Section 95(1) of the Karnataka Land Revenue Act, the same had to be considered by the Deputy Commissioner as required under the provisions to sub-section (2) particularly keeping in mind the proviso to the said section. The proviso to the said section makes it clear that the Deputy Commissioner shall not refuse permission for diversion of use of such land included in the Master plan published under Karnataka Town and Country Planning Act, 1961 (Karnataka Act No. 11 of 1963), as to if such diversion is in accordance with the purpose of land use specified in respect of the land in such plan.

Provided further that in Dakshina Kannada District subject to any law for the time being in force regarding erection of buildings or the construction of wells or

tanks, an occupant of dry (punja) and wet land or garden land who is not: (a) a person registered or liable to be registered as an occupant of such land under Section 48-A of the Karnataka Land Reforms Act, 1961 (Karnataka Act No. 10 of 1962); or (b) a grantee of such land under Section 77 of the said Act, may, without obtaining the permission required under this sub-section and notwithstanding anything contained therein, divert such land or part thereof to any other purpose after sending a prior notice in that behalf, in the prescribed form, to the Tahsildar and paying in the prescribed manner the fine prescribed under sub-section (7).

8. Therefore, except for the reason what is provided by these proviso the conversion sought for shall be granted and it is for this reason the Legislature in its wisdom has incorporated sub-section (5) of Section 95 which mandates where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within the period of four months from the date of receipt of the application, the permission applied for shall deemed have been granted. In all the proviso makes it very explicit that even if the Deputy Commissioner has passed order rejecting the application within a period of four months provided by sub-section (5) the deemed conversion will operate unless the said order has been communicated within the period of four months to the application. Therefore, as could be seen from sub-section (5) it mandates where the Deputy Commissioner fails to inform the applicant of his decision on the application made under sub-section (2) within the period of four months, it shall be deemed conversion. Therefore, the communication of decision is important. If the Deputy Commissioner has passed order rejecting the application but is not communicated to the applicant by virtue of provisions of Section 5, it will be deemed, the land is converted for the purpose, sought by the applicant.

9. In the facts and circumstances of the case, as could be seen the application was filed by the petitioner on 6-2-2013 after obtaining clearance from the Town Planning Authority as indicated above. The application is received by the Deputy Commissioner and acting on it he has sent a letter to the Tahsildar on 7-2-2013, the Tahsildar has sent a report on 24-5-2013 which is an affirmative report in favour of the petitioner. After receipt of it till 27-6-2013 the Deputy Commissioner has not considered the application. It is thus clear that period of four months had elapsed on 5-6-2013.

10. Therefore, the letter addressed by the Deputy Commissioner to the Tahsildar on 27-6-2013 seeking for further report from him about the availability of relevant documents itself is of no consequence because by then, sub-section (5) had become applicable and the permission sought for was deemed to have been granted. It is further to be noticed same Tahsildar has again sent a report on 22-8-2013 stating that the document as claimed by the petitioner are available in his office supporting the claim of the petitioners that her vendor was a allottee of the land in question. The second report of the Tahsildar has been acted upon by the Deputy Commissioner to issue notice on 5-9-2013. In view of what is

discussed above, the Deputy Commissioner had become functus officio by operation of sub-section (5) of Section 95 and all his orders are beyond the period of four months i.e., calculated from 6-2-2013 ending with 5-6-2013 are vitiated. Despite this legal position the Deputy Commissioner has called upon the petitioner to produce document and substantiate her title dated 5-9-2013 Annexure-H.

11. To cap it he has further issued an order rejecting reply sent by the petitioner dated 18-9-2013 and against the records produced has passed order dated 31-1-2014 signed on 3-2-2014. Such an order purports to be the order passed under sub-section (2) of Section 95 of Karnataka Land Revenue Act, but by then the provisions of sub-section (5) of the Act as referred above had applied and thus order dated 31-1-2014 signed on 3-2-2014 produced in the writ petition vide Annexures-L and L1 is void ab initio non est and is therefore quashed.

12. In the resultant position, I am satisfied all grounds urged in the writ petition against the impugned orders passed by the 2nd respondent-Deputy Commissioner and his conduct are worthy of acceptance. Consequently it is held, as under sub-section (5) of Section 95 the period stipulated had expired, the impugned orders dated 31-1-2014 signed on 3-2-2014 are illegal and unsustainable and they are quashed. Consequent to quashing of the order passed by the Deputy Commissioner and applying the provision of Section 95(5), petitioner is entitled to deemed conversion of land from agriculture to non-agriculture, as requested by her.

13. The next step the 2nd respondent was required to do is, to determine the amount of fee/fine payable for grant of land use as envisaged in Rule 107 of the Karnataka Land Revenue Rules, 1966.

14. Thus by a writ of mandamus, the 2nd respondent is directed to determine the fee/fine payable by the petitioner in respect of the land in question, applying the rates as indicated in the table of Rule 107(1). For convenience, it is necessary to draw the attention of the Deputy Commissioner to Serial No. 2 in the table requiring imposition of fee/fine at Rs. 10.76 per sq. metre based on the location of land. After such determination, he may call upon the petitioner to pay the same within the time stipulated and on payment of such fine, necessary order be passed. The writ petition succeeds on all grounds. The Deputy Commissioner is directed to act in terms of the observations made in the course of this order in accordance with law.

Mr. Aswatappa D. Government Advocate is permitted to file memo of appearance within four weeks.