

(2012) 12 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 22855 of 2011

B. Krishna Mohan Reddy and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Andhra Pradesh Agricultural Land (Conversion for Non-Agricultural Purposes) Act,
2006 — Section 2, 3, 4, 5, 6

Citation : (2013) 2 ALD 583

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Lakshmi, for the Appellant;

Judgement

L. Narasimha Reddy, J.—The A.P. Land Revenue Act had certain provisions, which have the effect of regulating the land use and other related matters. It was not at all possible for conversion of an agricultural land into other uses. A detailed exercise was required to be undertaken. Similar provisions were contained in other enactments also. However, the A.P. Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006 (for short "the Act") was enacted by the State Legislature enabling the conversion of agricultural lands for non-agricultural purposes. Taking advantage of certain lacunae in that Act, conversions are being resorted to and the result is that large extents of land that too mostly abutting the highways ceased to be agricultural fields and they have virtually become the commodity of commerce. The petitioners acquired an extent of Acs. 24.09 cents of land in Survey Nos. 48, 49, 50, 65, 66, 68 and 69 of Puduru Village, Gadwal Manal, Mahabubnagar District. They wanted to construct godowns in that land. With that objective, they filed an application on 12.2.2011 before the Revenue Divisional Officer, Gadwal, 2nd respondent herein u/s 3 of the Act. The 2nd respondent called for report of the Tahsildar, Gadwal, 3rd respondent herein as required under the Rules framed under the Act (for short "the Rules"). The report submitted by the 3rd respondent revealed that the applications are pending under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act,

1950 (for short "the Tenancy Act") in respect of land in Survey Nos. 40, 49 and 50 and that the petitioners themselves have submitted applications for cancellation of the certificates of protected tenancy issued in respect of those lands. Taking these aspects into account, the 2nd respondent passed an order dated 9.4.2011 rejecting the application of the petitioners. The same is challenged in this writ petition.

2. The petitioners contend that there is absolutely no basis for the 2nd respondent in rejecting the application and that the reasons mentioned in the impugned order are outside the scope of the Act and the Rules. They submit that when the Act provides for a deemed permission on expiry of 30 days and when the only consequence for a land being put to non-agricultural use is the collection of application fee of 10% of the market value and levy of penalty of 50%, the 2nd respondent was not justified in issuing the impugned proceedings.

3. The 1st respondent filed a counter-affidavit. It is stated that the verification of the records disclosed that there are protected tenants in respect of the land in Survey Nos. 48, 49 and 50 and that the petitioners themselves have submitted application for cancellation of the certificates of protected tenancy. It is also stated that as long as the title in respect of such land is not clear, the petitioners cannot exercise their right to change the land use.

4. At the outset, it needs to be observed that the Legislature was not apprised of the consequences of indiscriminate conversion of agricultural lands for non-agricultural purposes, before it legislated the Act, and the mechanism provided for under it is totally inadequate. It is not without reason that the land related disputes, and commerce in land recorded a phenomenal increase, after the Act came into existence. It is hoped that adequate attention will be paid to it, at appropriate stage.

5. The Act purports to bring about the mechanism for permitting conversion of agricultural lands for other uses. As usual, Section 2 contains definitions. Important among definitions is that of the word "owner", occurring in clause (m), which reads,

"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, educational or charitable purpose, rent or profits for the agricultural land or for the structure constructed on such land and includes in respect of the lands that have been leased out by the State Government or the Central Government.

Section 3 of the Act mandates that no agricultural land shall be put to non-agricultural uses, unless permitted by the competent authority. Sub-section (6) thereof provides for accrual of deemed permission, in case the competent authority, i.e., the Revenue Divisional Officer does not pass an order, either granting or rejecting permission within 60 days from the date of submission of the application, or within 30 days from the date on which, the deficit amount is

paid, as the case may be. Section (4) stipulates the amount to be paid for such conversion i.e., 10% of the basic value for the areas, as may be notified by the Government. Section 5 confers powers upon the competent authority, or the Revenue Divisional Officer. For all practical purposes, Section 6 waters down the entire purport. It reads,

S. 6: Penalty.--(1) If any agricultural land has been put to non-agricultural purpose without obtaining the permission as required u/s 3, the land shall be deemed to have been converted into non-agricultural purpose.

(2) Upon such deemed conversion, the competent authority shall impose a fine of 50% over and above the conversion fee for the said land specified u/s 4 in such manner as may be prescribed.

(3) The owner or occupier of the land shall pay the fine so imposed under subsection (2) in such manner as may be prescribed.

(4) Any fee or penalty which remains unpaid after the date specified under subsection (2) for payment, shall be recoverable as per the provisions of the Andhra Pradesh Revenue Recovery Act, 1864.

6. In other words, if a person converts the agricultural land for other purposes, on his own accord, and is prepared to pay 15% of the basic value, he has none to be afraid of.

7. The first contention advanced by the petitioners is that permission has accrued to them by operation of Section 4, since no order, rejecting the application is passed within 60 days. Whatever be the justification to draw such inference, once an order of rejection is passed before the land is converted, an applicant cannot fall back upon the deeming provision.

8. Another contention advanced by the petitioners is that the 2nd respondent has no jurisdiction to reject the application, and he has no option, but to accord permission, once the requested amount is paid. Acceptance of this contention would lead to a situation, where the entire Act would be a dead letter. It is already erected on a very weak base. The very fact that power is conferred upon the Revenue Divisional Officer, to pass orders, according permission, makes it clear that he is equally competent to reject the application. This is so, whether one goes by the principles underlying the General Clauses Act, or the canons of interpretation. Further, the rules provide for calling of a report from the Mandal Revenue Officer and Mandal Revenue Inspector to ascertain the various aspects, which are germane for this purpose. Though verification of the ownership of the land is an important facet, the other factors, such as the advisability or otherwise, permitting conversion cannot be said to be outside the purview of the Act. For instance, the establishment of a poultry farm either on an agricultural land, adjoining the village, or in the middle of a large ayacut would bring with it, several problems, to be faced by the immediate neighbours, including health hazard, and damage to crops. The competent authority is bound to take this into

account and reject the application, even if there is no dispute as to ownership, and the stipulated amount is paid.

9. In the instant case, a substantial extent of the land is the subject-matter of proceedings under the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950. It would certainly impinge upon the ownership. The application seeking conversion can be made only by a person, who is owner of the land, as defined under the Act. The 2nd respondent has clearly stated that there are disputes pertaining to ownership of the land. Therefore, the order passed by the 2nd respondent cannot be said to be illegal, or outside the scope of the Act and the Rules.

10. The writ petition is accordingly dismissed. However, in case the petitioners submit a letter/representation restricting their application to the extent of undisputed land, the 2nd respondent shall pass appropriate orders within a period of three weeks. As regards the land, which is covered by the proceedings under the Tenancy Act, it shall be open to the petitioners to renew their request after the proceedings assume finality. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.