

(2013) 09 KAR CK 0299

In the Karnataka High Court

Case No : Writ Appeal No"s. 30894 and 31336 of 2012 (GM-RES)

Belgaum Urban Development Authority

APPELLANT

Vs

Amita Nitin Shirgurkar and Another

RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2014) 1 KarLJ 671

Hon'ble Judges : K.L. Manjunath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : A.A. Pathan, Additional Government, Sri M.A. Hulyal and Sri Sharad V. Magdum, for the Appellant;

Judgement

A.N. Venugopala Gowda, J.—These appeals have been filed assailing a common order passed by the learned Single Judge. The detailed facts are stated in the impugned order, since in the case of Amita Nitin Shirgurkar Vs. The Belgaum Urban Development Authority, Belgaum and Another, . Hence, it is unnecessary to state the same here again, except where necessary for deciding these appeals. Respondent 1 is the owner of the land in dispute which was reserved under comprehensive development plan approved by the Government of Karnataka on 18-11-1993 and published in the Karnataka State Gazette on 13-11-1994, for the purpose of "open space". The land was not acquired within the specified period from the date of publication of GDP. The owner made an application before the planning authority for according permission to utilise the land for residential use. Acting under sub-section (2) of Section 69 of the Karnataka Town and Country Planning Act, 1961 (for short, "the Act"), the planning authority permitted the owner of the land to utilise the land for residential purpose. The landowner, thereafter, made an application to the Deputy Commissioner for conversion of the land for residential purpose. The application having rejected on 23-12-2008, the landowner filed Appeal No. 134 of 2009 before the Karnataka Appellate Tribunal. Appeal was allowed on 19-10-2010 and the Deputy Commissioner was directed to accept the conversion

fee and grant order of conversion. The said order was questioned by the Deputy Commissioner, Belgaum District in W.P. No. 6696 of 2011. The landowner once again having approached the Deputy Commissioner to grant order of conversion and the application having been rejected on 5-11-2011, on the ground that the permission of the State Government is necessary for conversion of the land, as per a Circular dated 6-3-2010, the landowner filed W.P. No. 68630 of 2011. Since both writ petitions pertained to the same land and the parties being common, the learned Single Judge heard and decided both the writ petitions together.

2. Sri M.A. Hulyal, learned Advocate appearing for the Belgaum Urban Development Authority contended that after lapse of the designation as per the provision of Section 69(2) of the Act, the change of land is not automatic, in view of the procedure contemplated u/s 14A of the Act and that the landowner should seek change of land use from agricultural to residential use and as such, learned Single Judge has committed error in holding that there is no need for seeking permission of the Planning Authority once again.

3. Learned Additional Government Advocate appearing for the Deputy Commissioner, Belgaum District, contended that the finding recorded by the learned Single Judge that the provisions of Section 14A, if read along with provision of Section 12C and Section 69(2) of the Act harmoniously, leads to the conclusion that the designation attached to the land is lapsed, is contrary to the object of the Act. He contended that, since the land was designated as "open space" unless and until permission of the State Government is granted, the land will not lose its original character of "open space".

4. Learned Advocate for the landowner, on the other hand, made submissions in support of the order passed by the learned Single Judge and sought dismissal of the writ appeals.

5. We perused the record. The point for consideration is "whether the order passed by the learned Single Judge calls for any interference?"

6. Section 69 of the Act states as hereunder:--

69. Acquisition of land designated for certain purposes in a Master Plan.--(1) The Planning Authority may acquire any land designated in a Master Plan for a specified purpose in clause (b), (c) or (d) of sub-section (1) of Section 12, or for any public purpose out of those specified land in clause (a) of sub-section (1) of Section 12 by agreement or under the Land Acquisition Act, 1894 (Central Act I of 1894) as in force in the State. If the land is acquired under the Land Acquisition Act, 1894, the provisions of said Act as amended by Section 72 of this Act shall apply to the determination of compensation for the acquisition of such land.

(2) If the designated land, except land specified for the purpose in clause (b) of sub-section (1) of Section 12, is not acquired by agreement within five years from the date, the Master Plan is published in the gazette under sub-section (4)

of Section 13 or if the proceedings under Land Acquisition Act are not commenced within such period the designation shall be deemed to have been lapsed.

7. Undeniably, the disputed land was not acquired within five years period. No proceedings for acquisition was commenced within the specified period nor has been commenced even till date. After expiry of the stipulated period, the landowner made an application to the planning authority and acting under sub-section (2) of Section 69 of the Act, permission was granted for utilisation of the disputed land for residential purpose, on account of lapse of the designation and that the betterment fee was deposited. Appeal filed as against the rejection of the request for conversion was allowed by the Appellate Tribunal.

8. The land in dispute is surrounded by a residential layout. The landowner has sought to use the land for residential purpose. In such circumstances, the construction placed by learned Single Judge on Section 14A of the Act is not erroneous and is in accordance with the ratio of the decision, in the case of Girnar Traders Vs. State of Maharashtra and Others, . The land in dispute having been shown in the development plant as "open space" and the same having not been sought to be acquired by initiation of acquisition proceedings or otherwise within the specified period of five years and the designation having elapsed, the land has become available for development by the owner. There being no dispute that the land in dispute is surrounded by residential layout, the landowner having sought to utilize the property for residential use only, after obtaining conversion and payment of development charges, the stand taken by the appellants before the learned Single Judge being contrary to the record of the case and settled principles of the law, the learned Single Judge is justified in allowing the writ petition filed by the owner and consequently, dismissing the writ petition filed by the Deputy Commissioner, Belgaum District. We do not find any justification to interfere with the order passed by the learned Single Judge.

In the result, writ appeals being devoid of merit are dismissed with no order as to costs.