

(2016) 02 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition Nos. 103750/2015 and 100791/2016 (KLR-CON)

Bheemappa H. Raddi

APPELLANT

Vs

The Deputy Commissioner, Belgaum District

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Karnataka Land Revenue Act, 1964 — Section 12, Section 13, Section 72, Section 95, Section 95(5)

Karnataka Town and Country Planning Act, 1961 — Section 69, Section 69(2)

Citation : (2016) 02 KAR CK 0014

Hon'ble Judges : B. Veerappa, J.

Bench : Single Bench

Advocate : K.L. Patil and S.B. Naik, Advocates, for the Appellant; K.S. Patil, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J.—1. Sri K.S. Patil, learned HCGP undertakes to file power for the respondent/State Government in W.P. No. 103750/2015.

2. The petitioner in W.P. No. 103750/2015 has prayed for issue of writ of mandamus directing the respondent/State Government to accept the conversion fees and issue NA order in the interest of justice.

3. It is the case of the petitioner that he is the absolute owner and in occupation of the land bearing Sy. No. 659 measuring 9 guntas situated at Kanabargi village, Belgaum Taluk and District. He has filed an application for conversion of agricultural land into non-agricultural use under Section 95 of the Karnataka Land Revenue Act on 24.10.2008 with all relevant records. The respondent/Deputy Commissioner by an order dated 13.4.2009 converted the other lands of the petitioner and rejected the application of the petitioner's in respect of Sy. No. 659 measuring 9 guntas by an order dated 1.8.2009 as per Annexure-C to the writ petition. Aggrieved by the said order passed by the Deputy Commissioner rejecting his application in respect of Sy. No. 659 measuring 9

guntas, the petitioner filed an appeal before the Karnataka Appellate Tribunal in Appeal No. 906/2009.

4. The Tribunal without considering the entire material on record, by the order dated 2.6.2011 set aside the order passed by the respondent and remanded the matter for reconsideration and to pass appropriate orders in accordance with law.

5. The petitioner approached this Court by filing W.P. No. 64559/2011 which was allowed and the order of the Karnataka Appellate Tribunal was set aside remanding the matter for fresh consideration by it.

6. On second occasion, after remand by this Court, by the order dated 20.2.2013 in Appeal No. 906/2009 the Karnataka Appellate Tribunal allowed the same and quashed the order passed by the Deputy Commissioner. The application dated 24.10.2008 filed by the petitioner under Section 95(5) of the Karnataka Land Revenue Act was allowed directing the Deputy Commissioner to collect the requisite conversion fees from the petitioner as per the prevailing rate as on the deemed conversion and issue a formal order. In spite of the said order passed by the Karnataka Appellate Tribunal, the Deputy Commissioner has not passed any order. Therefore, the petitioner is before this Court for the relief sought for.

7. When the matter came up for hearing on 4.1.2016, the HCGP was directed to take notice and get the instructions as to why the Deputy Commissioner has not issued the formal order which reads as under:

"Learned HCGP is directed to take notice for the respondent.

Learned counsel for the petitioner pointed out that the Tribunal as long back as on 20.02.2013 allowed the application filed by the petitioner dated 24.10.2008 for conversion as per Section 95(5) of the Karnataka Land Revenue Act and directed the Deputy Commissioner to collect requisite conversion fees from the petitioner as per the rate which was prevailing on the deemed conversion and issue formal order. Unfortunately, till today Deputy Commissioner has not issued any order as contemplated. The reason is not forthcoming and the petitioner is unnecessarily driven to this Court which is nothing, but creating litigation at the hands of the State.

A copy of the order may be furnished to the HCGP to take necessary steps.

Call next week."

Again when the matter was posted on 11.1.2016, the learned HCGP submitted that against the order passed by the Karnataka Appellate Tribunal dated 20.2.2013, the Government has already issued authorisation to file a writ petition on 22.2.2014 and that is how the present writ petition i.e., Writ Petition No. 100791/2016 is filed by the State Government challenging the order dated 20.2.2013 passed by the Karnataka Appellate Tribunal after a lapse of nearly 3 years.

8. It is the case of the Deputy Commissioner/petitioner in Writ Petition No.

100791/2016 that, while granting conversion in respect of other lands, a clarification was sought in respect of the property in question i.e., Sy. No. 659 measuring 9 guntas from the Belgaum Urban Development Authority (for short hereinafter referred to as "the BUDA") through Tahsildar. In turn, the Tahsildar sent a letter to the BUDA on 12.11.2008. The petitioner/Deputy Commissioner after verifying the relevant documents pertaining to the land in question and after spot inspection passed an order on 13.4.2009 in respect of other two lands stating the reason for non conversion of Sy. No. 659 measuring 9 guntas that it was within the green belt area which was reserved for garden. Accordingly, the Additional Deputy Commissioner requested the Commissioner, BUDA on 29.4.2010 to clarify whether the land in question measuring 9 guntas is used for the purpose of park or not. In turn, the BUDA clarified that the land in question measuring 9 guntas is reserved for the park and the acquisition proceedings has not been taken by the BUDA. Therefore, it is the case of the petitioner/Government that the property is already reserved for the civic amenity by the BUDA and without considering the records, the Karnataka Appellate Tribunal has passed the order. Therefore, the State Government has filed the present writ petition challenging the order dated 20.2.2013 passed by the Karnataka Appellate Tribunal.

9. I have heard the learned Counsel for the parties to the lis.

10. Sri K.L. Patil, learned Counsel for the petitioner and respondent in Government petition contended that the impugned action of the Deputy Commissioner in not following the direction issued by the Karnataka Appellate Tribunal is contrary to law. He also contended that till today, either the Deputy Commissioner or the BUDA has not acquired the land in question. In support of his contentions, he sought reliance of the dictum of the Division Bench of this Court in the case of Belgaum Urban Development Authority, Belgaum v. Amita Nitin Shirgurkar and Another in Writ Appeal Nos. 30894/2012 and connected matter (D.D. 19th September, 2013). He also contended that the Karnataka Appellate Tribunal has passed the order on 20th February, 2013 allowing the application filed by the owner under the provisions of Section 95(5) of the Karnataka Land Revenue Act directing the Deputy Commissioner to collect the requisite conversion fee at the rate which was prevailing as on the date of deemed conversion and issue a formal order. Except stating in the writ petition filed by the Government that the property is reserved for park as per the Comprehensive Development Plan, the State has not questioned the deemed conversion order. He contended that as the deemed conversion order is not challenged, it is the duty of the Deputy Commissioner to obey the orders passed by the Karnataka Appellate Tribunal. Therefore, he sought to allow the writ petition filed by the owner and dismiss the writ petition filed by the State Government.

11. Per contra, Sri K.S. Patil, learned HCGP appearing for the petitioner/State in W.P. No. 100791/2016 contended that the property in dispute i.e., Sy. No. 659

measuring 9 guntas is declared as the green belt area and therefore, granting conversion of land does not arise. The Tribunal only on the basis of delay, granted permission for conversion of agricultural land in respect of 9 guntas. He contended that when the property in question is in green belt area, reserved for park, the conversion cannot be granted. Therefore, he sought to allow the writ petition filed by the State and dismiss the writ petition filed by the owner of the land.

12. I have given my anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record.

13. It is an admitted fact that the property in question i.e., Sy. No. 659 measuring 9 guntas belongs to the petitioner/owner. The ownership of the land is not disputed by the Deputy Commissioner till today. It is also not in dispute that the petitioner filed an application for conversion of the land in question and other lands and accordingly, the Deputy Commissioner by the order dated 13.4.2009 allowed the conversion in respect of the other lands and rejected in respect of Sy. No. 659 measuring 9 guntas by the order dated 1.8.2009. It is also not in dispute that the said rejection order was the subject matter before this Court in the writ petition and after remand, the Tribunal after considering the entire material on record, by the order dated 20.2.2013 allowed the appeal and set aside the order passed by the District Commissioner rejecting the claim of the applicant for conversion. Consequently, the application filed by the petitioner on 24.10.2008 was allowed under the provisions of Section 95(5) of the Karnataka Land Revenue Act, 1964 directing the Deputy Commissioner to collect the requisite conversion fee from the petitioner/owner of the land in question as per the rate which was prevailing as on the date of the deemed conversion and issue a final order.

14. Admittedly in the present case, the State has filed the writ petition nearly after a lapse of 3 years challenging the order passed by the Karnataka Appellate Tribunal only on the ground that the property in question is reserved for park and it is in the green belt area. In the entire writ petition, the petitioner/State has not explained the reason for the delay of 3 years in filing the writ petition. It is also not in dispute that though the land was reserved for the public purpose in the Comprehensive Development Plan as alleged, the same is not acquired by the State Government or the Deputy Commissioner or the BUDA till today. Admittedly, the State Government has not impleaded BUDA in the present writ petition filed by it. Even if the land is included in the Comprehensive Development Plan, the concerned authority - either the Deputy Commissioner or the BUDA has to acquire the land within 5 years, but the same having not been done, the impugned action of the respondent/Deputy Commissioner is in violation of the provisions of Section 69(2) of the Karnataka Town and Country Planning Act, 1961.

15. It is also not in dispute that the Deputy Commissioner has not produced any material before the Court when it was reserved for public purpose in the

Comprehensive Development Plan approved by the State Government and whether the land is acquired within the specified period from the date of publication of the Comprehensive Development Plan. The provisions of Section 69 of the Karnataka Town and Country Planning Act, 1961 reads as under:

"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."

16. Undisputedly the land in question is not acquired by the Deputy Commissioner or the BUDA within a period of 5 years and no proceedings for acquisition was commenced within the specified period, nor even till today. After the expiry of the stipulated period, now either the Deputy Commissioner nor BUDA cannot utilise the land of the petitioner's and unnecessarily has driven the petitioner before this Court for more than 3 years from the date of the order passed by the Karnataka Appellate Tribunal.

17. The Hon"ble Supreme Court in the case of Girnar Traders v. State of Maharashtra and Others , 2007(7) SCC 555 has held as under:

"55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilization of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is served in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition."

18. Admittedly, the State Government has not disputed the ownership of the petitioner/owner of the land in question. No material is produced before the Court that the Government has declared the land bearing Sy. No. 659 measuring 9 guntas as the green belt area and whether the Government or the BUDA or the Deputy Commissioner has acquired the land or not. Hence, the State Government is deliberately acting to deviate the orders passed by this Court as well which is nothing but generating litigation by riding the Court as well as on general public. It is not the case of the Government that they have acquired the land of the owner within a period of 5 years after the inclusion of the land in the Comprehensive Development Plan.

19. In view of the aforesaid reasons, Writ Petition No. 103750/2015 filed by the owner of the land in question is allowed directing the Deputy Commissioner to accept the conversion fee and issue conversion order in favour of him as directed by the Karnataka Appellate Tribunal as long back as on 20th February, 2013 within a period of 6 weeks from the date of receipt of a copy of this order.

20. Absolutely no explanation is offered by the State for the delay of 3 years and it has also not produced any material document to prove that the property in question is included in the Comprehensive Development Plan and even after a lapse of 5 years as contemplated under Section 69(2) of the Town and Country Planning Act, 1961 either the State Government or the Deputy Commissioner or the BUDA has not initiated any proceedings to acquire the land till today even after the lapse of 8 years. In the absence of the same, Writ Petition No. 100791/2016 filed by the State Government is liable to be dismissed with costs.

Accordingly, ordered.